No. 26-1740

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NEW HAMPSHIRE YOUTH MOVEMENT, *Plaintiff-Appellee*

v.

DAVID M. SCANLAN, in his official capacity as New Hampshire Secretary of State, *Defendant-Appellant*

COALITION FOR OPEN DEMOCRACY; LEAGUE OF WOMEN VOTERS OF NEW HAMPSHIRE; THE FORWARD FOUNDATION; MCKENZIE NYKAMP TAYLOR; DECEMBER RUST; MILES BORNE; A.M., by his next friend Russell Muirhead; and L.M., by her next friend Russell Muirhead, *Plaintiff-Appellees*

v.

DAVID M. SCANLAN, in his official capacity as New Hampshire Secretary of State; and JOHN M. FORMELLA, in his official capacity as New Hampshire Attorney General, *Defendant-Appellants*

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Appeal from the United States District Court for the District of New Hampshire

APPELLANTS' OPENING BRIEF

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PRELIMINARY STATEMENT

This appeal concerns the facial constitutionality of New Hampshire's system for ensuring all voters are qualified to vote in New Hampshire elections. This Court need not reach the merits of this question because none of the Plaintiffs have established standing to bring such a claim. However, should this Court reach the merits, United States Supreme Court precedent plainly forecloses them.

Specifically challenged is New Hampshire's requirement that voters prove citizenship at the time of registration and likewise prove eligibility should a successful challenge to the voter's qualifications thereafter be raised. As to registration, when individuals register to vote in New Hampshire, they must "present proof of citizenship" ("DPOC"). N.H. Rev. Stat. Ann. § ("RSA") 654:12, I. Accepted proof of citizenship includes a birth certificate, passport, naturalization papers, proof that an applicant has previously registered to vote in New Hampshire, or "any other reasonable documentation which indicates the applicant is a United States citizen." *Id.* New Hampshire election officials have access to various databases to confirm someone's citizenship should the voter not have appropriate documentation on hand. RSA 654:12, II-a(a) & VI. And vouchers are available to allow citizens to pay any fees they cannot afford associated with gaining such documentation. RSA 654:12, II-a(b) & VI.

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Once registered, a voter's qualifications may be challenged upon attestation by another individual who has personal knowledge or other probable cause basis to assert that the challenged voter is ineligible to cast a ballot. *See* RSA 659:27 & 659:27-a. If a moderator or an election official, after hearing from the voter, determines the challenge is more likely than not well grounded and supported by specific facts, a voter may be disallowed to cast a ballot. *Id.* However, any voter aggrieved by such a decision has a right to have the decision immediately reviewed by the state superior court. *Id.* The court must make every reasonable effort to decide the matter before the close of the polls. RSA 654:12, V.

The district court found both these systems facially unconstitutional under the *Anderson-Burdick* framework because New Hampshire repealed two government-supplied affidavits that voters could use during these processes if they were not in possession of documentary proof of citizenship at the time of registration or challenge to prove their eligibility. The district court's ruling was based upon a finding that the citizenship-proof requirements imposed significant burdens upon a subset of voters. The district court further found that these burdens were not justified by the State's interests in election integrity, voter confidence, and administrative efficiency. The consequence of this ruling is to set a federal constitutional baseline: No State can require voters to prove their citizenship to register to vote or eligibility to cast a ballot unless the State also supplies those

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voters with self-verifying affidavits that they can sign in lieu of actual documentary proof. The Federal Constitution imposes no such constitutional baseline on the States.

The district court's ruling was in error and contrary to *Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008). In *Crawford*, the Supreme Court explained that requiring voters to make a pre-election trip to the bureau of motor vehicles with appropriate documentation (such as a birth certificate) to gain a photo identification to present at the polls "surely does not qualify as a substantial burden on the right to vote" nor does it "even represent a significant increase over the usual burdens of voting." *Id.* at 198-199. Furthermore, even if such a requirement were assumed to impose a high burden on some voters, that would not undermine the statute's facial constitutionality as the statute still has a plainly legitimate sweep. *Id.* at 200-03.

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If requiring voters to take their documentary proof to the bureau of motor vehicles and obtain a photo identification for use at the polls does not impose an undue and unconstitutional burden, then requiring voters to bring that same documentation directly to the polls cannot create an unconstitutional burden. Consequently, under controlling precedent, the district court should have found the burden imposed minimal and the State's legitimate government interests in election integrity, voter confidence, and administrative efficiency to amply justify

it. This Court should correct the district court's error, reverse its decision below, vacate its injunction, and remand with instructions to enter judgment in favor of the Defendant-Appellants.

STATEMENT OF JURISDICTION

Plaintiffs in these consolidated cases invoked the district court's jurisdiction under 28 U.S.C. §§ 1331 and 1343. The district court awarded judgment to Plaintiffs on May 28, 2026, to which Defendants filed a timely Notice of Appeal. The First Circuit has jurisdiction to hear Defendants' appeal under 28 U.S.C. § 1291.

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STATEMENT OF THE ISSUES

Whether the Organizational and Individual Plaintiffs proved standing under Article III of the United States Constitution.

Whether the district court misapplied the United States Supreme Court's standard for facial constitutional challenges to state election laws.

Whether the district court erred finding that New Hampshire's election system violates the United States Supreme Court's *Anderson-Burdick* framework.

Whether the Plaintiffs may maintain a federal procedural due process claim separate from their facial constitutional claim under the United States Supreme Court's *Anderson-Burdick* framework.

Whether New Hampshire's repeal of Challenged Voter Affidavits ("CVAs") produces a voting system that violates challenged voters' procedural due process rights, particularly where challenged voters have a statutory right to immediate state court review of such challenges prior to the polls closing on election day.

Whether the injunctive remedy the district court imposed exceeded the limits of its equitable authority.

STATEMENT OF THE CASE

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"The Constitution gives States the authority to set the qualifications for voting in congressional elections, as well as the authority to set the 'Times, Places and Manner' to conduct such elections in the absence of contrary congressional direction." *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 774 (2018). For almost 50 years, New Hampshire has required persons registering to vote to provide proof of their eligibility to vote. RSA 654:12. Likewise, for almost 15 years, New Hampshire law has required registered voters to present photo identification to obtain a ballot. RSA 659:13.

A person registering to vote who did not possess the documents necessary to prove identity, age, or citizenship could prove one or more of those qualifications by executing a Qualified Voter Affidavit ("QVA"), RSA 654:12 (repealed Nov. 11, 2024). Also, a registered voter could choose to prove his or her identity

to obtain a ballot, or overcome a challenge to his or her eligibility after obtaining a ballot, by executing a CVA, RSA 659:13 (repealed Nov. 11, 2024).

Local election officials offered persons registering to vote, registered voters, and challenged voters the applicable affidavit forms as appropriate. *See, e.g.*, Defs. Ex. SS, N.H. Election Procedure Man. at 1, 84 (EPM-V.2024.0).[1] Executing a QVA required the affiant to attest to truthfulness with a signature and, in certain instances, sit for a photograph. *See, e.g.*, *id.* at 30-33. An affiant could refuse to sit for a photograph if he or she executed an Affidavit of Religious Objection. *See, e.g.*, *id.* at 31.

A voter who checked-in to vote without photo identification had to execute a CVA, subject to the same attestation and photograph requirements. *See, e.g.*, *id.* at 31-32. If any registered voter's age, citizenship, or domicile eligibility was challenged after receiving a ballot, and if the supervisors of the checklist or moderator ruled that the challenge was "well-grounded," the challenged person could only vote upon executing a CVA. *See, e.g.*, *id.* at 79-80. As with identity, CVAs, and registration QVAs, a challenged voter had to attest to the truthfulness of his or her affidavit. *See, e.g.*, *id.* at 31-32.

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[1] The Court granted the parties' Joint Motion for Leave to File Deferred Appendix. Order of Court (Nov. 4, 2026). Accordingly, Defendant-Appellants cite the record in this preliminary opening brief. Defendant-Appellants will file a final opening brief with citations to the appendix as directed by the Court in its Order. *Id.*

New Hampshire's election system utilized these self-verifications and the State's reactive, post hoc investigation of them. Trial Tr. ECF 164, 37:11-13. That procedure may have been more accommodating for some, but it also allowed ballots to be cast before the State could independently verify those attestations. Trial Tr. ECF 160, 116:21-117:6. Once cast, an unlawful ballot will be counted—whether offered by malice or mistake—and it cannot be identified or removed from an election result. Trial Tr. ECF 160, 125:18-24. The State was therefore left to invest substantial resources investigating these affidavits after the fact, at a time when the consequences of an unlawfully cast ballot could no longer be corrected. *Id.*

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Beginning in 2024, New Hampshire passed a law that eliminated these two self-verification affidavits followed by other laws augmenting its resulting election system. The Plaintiffs contend that New Hampshire's election system is now unconstitutional because of this repeal. However, a holistic review of New Hampshire's election system after the repeal of these government-supplied self-verification affidavits reveals a system that imposes a minimal, ordinary burden on voters that is amply justified by the State's important and legitimate interests in regulating elections.

New Hampshire Laws 2024, Chapter Law 378 (also referred to as New Hampshire House Bill 1569) ("HB 1569")—the legislative action that triggered

this lawsuit—repealed the QVA and CVA. It became law on September 12, 2024, and went into effect on November 11, 2024. Its statutory reforms to QVA-use for citizenship and CVA-use for voter challenges can be found in the 2024 Session Laws at Chs. 1, 4, and 8. *See* HB 1569-FN, 2024 Sess. Ch. 378:1.

HB 1569 repealed and reenacted RSA 654:12, removing "a qualified voter affidavit [and] a sworn statement on the voter registration form used starting 30 days before an election and on election day" as options available to registering voters to prove citizenship. *Id.* Ch. 378:1. Consequently, it removed the QVA form and QVA procedures from the statute. *Id.* No previously registered voter appearing in the Statewide Voter Registration System ("SVRS") would be required to re-prove citizenship upon re-registering—HB 1569 did not change that. *Id.* HB 1569 added that "[a]ny dispute as to whether a person has met the requirements to register to vote or to vote shall be decided by the election official of the town or ward in charge of voter registration or in charge of the polling place if the dispute arises at the polling place." *Id.* The law was amended to afford any person adversely effected by an election official's decision "immediate appeal to the superior court[.]" *Id.* HB 1569 required that the appeal be heard promptly and that the court "make every reasonable effort to decide the matter … before the close of the polls on election day." *Id.*

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A moderator's legal standard for deciding whether a challenge ballot may be cast did not change—the question continues to be whether "it is more likely than not that the challenge is well grounded[.]" *Id.* (repealing and reenacting RSA 659:27, II). Prior to HB 1569, the moderator was ***required*** to receive an ineligible ballot when "the person signs and gives to the moderator an affidavit[.]" *Id.* After HB 1569, however, moderators are prohibited from receiving a ballot they believe is unlawful. *Id.* HB 1569 accordingly repealed CVAs. *Id.* Relatedly, HB 1569 ended the requirement that clerks record the use of repealed affidavits. *Id.* Ch. 378:8 (repealing and reenacting RSA 659:32).

New Hampshire Laws 2025, Chapter 277 (also referred to as New Hampshire House Bill 464) ("HB 464") further modified the proof-of-citizenship requirement that HB 1569 repealed and reenacted:

> (a) CITIZENSHIP. The supervisors of the checklist, or the town or city clerk, shall accept from the applicant any one of the following as proof of citizenship: the applicant's birth certificate, passport, naturalization papers if the applicant is a naturalized citizen, ***proof that the applicant was previously or is currently registered to vote in a different town or ward in New Hampshire***, or any other reasonable documentation which indicates the applicant is a United States citizen.

HB 464, 2025 Sess. Ch. Ch. 277:3 (amending RSA 654:12, I(a)) (emphasis in original). HB 464 amends two additional provisions that HB 1569 enacted or amended: Ch. 277:4 (amending RSA 654:12, III) and Ch. 277:5 (amending RSA 654:12, VI). *Id.* The new law also enhanced the resources available to voter

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registrants to prove their eligibility. It authorized local election officials' access to databases including the SVRS, Department of Motor Vehicles ("DMV"), and New Hampshire Vital Records, "to assist voters in providing proof of citizenship, age, domicile, and identity to the city and town clerks." *Id.* (enacting RSA 654:12, VI). Moreover, state law now provides that "[t]he secretary of state shall work with the city and town clerks to ensure access [to these resources] on election day at the polling location." *Id.* (enacting RSA 654:12, VI).

After the district court's judgment, New Hampshire law materially changed again. On July 17, 2026, New Hampshire Laws 2026, Chapter 68 (also referred to as New Hampshire House Bill 365) ("HB 365") added "a procedure for local election officials and the secretary of state to verify the citizenship of a voter who does not have documentary proof of citizenship." HB 365-FN, 2026 Sess. Ch. 68 at 1. The Secretary and local election officials have an affirmative duty to assist registering voters in verifying citizenship:

> [t]he secretary of state ***shall*** make reasonable efforts to determine whether the person [registering to vote] is a United States citizen by accessing relevant and available in-state, out-of-state, and federal databases that contain such information.

Id. at 2:6-8 (emphasis added). It also "create[d] a voucher program for local election officials to give to indigent voters who cannot afford the cost of obtaining a birth certificate[.]" *Id.*

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Additionally, on July 30, 2026, New Hampshire Laws 2026, Chapter 249 (also referred to as Senate Bill 438) ("SB 438") clarified that the SVRS must be accessible at polling places. SB 438 required that the Secretary and clerks ensure "direct or indirect access on election day at the polling location to the [SVRS.]" SB 438, 2026 Sess. Ch. 249:1.

Under current law, any registered voter of a town or ward may challenge the eligibility of another voter offering to cast a ballot there. RSA 659:27, I. An election official, a political committee-appointed challenger (RSA 666:4), or an attorney general-appointed challenger (RSA 666:5), may also challenge a voter's eligibility. *Id.* In addition to these challenger-qualifications, there are strict requirements regarding the challenge process. A challenger may only assert a challenge in writing, using a state-issued Asserting a Challenge Form. RSA 659:27-a, I. It is an affidavit signed and sworn under oath administered by an election official, subject to the penalties of perjury. *Id.* "A challenge may be asserted ***only upon personal knowledge*** or other basis of ***probable cause*** that the challenged voter is ineligible to vote." RSA 659:27-a, II (emphasis added).

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The Challenge Form requires the affiant's name and address and the name of the challenged voter. Pls. Ex. 213. There are 10 possible challenge grounds listed; the challenger chooses all that apply. *Id.* The challenger must state "the specific source" of personal knowledge or probable-cause basis upon which the challenger

relies. *Id.* The moderator completes the bottom portion of the form. If the challenge is to a voter's age, citizenship, domicile, or identity, the moderator will mark the supervisors' decision regarding the voter's eligibility in that town or ward. *Id.* All other grounds are directed to the moderator.[2] *Id.* The moderator must give each challenged voter an opportunity to be heard. RSA 659:27-a, II(b). The moderator then decides whether the challenge is more-likely-than-not well-grounded. RSA 659:27, II.

Any voter aggrieved by a successful challenge may obtain ***immediate*** judicial review of the decision in the superior court. RSA 659:27-a, II(b). The superior court must "hear the appeal forthwith and shall make every reasonable effort to decide the matter as soon as possible and before the close of the polls on election day." RSA 654:12, V.

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A. The Plaintiffs

Four organizations and five individuals brought challenges to HB 1569 shortly after its enactment. The first case is *N.H. Youth Movement v. Scanlan*, No. 1:24-cv-00291-SE-TSM ("Youth Movement Litigation"). The second is *Coalition for Open Democracy, et al. v. Scanlan, et al.*, No. 1:24-cv-00312-SE-TSM ("*Coalition* Litigation"). The individual plaintiffs appear in the *Coalition*

[2] In summary, the moderator addresses grounds that a voter (1) already voted; (2) is disqualified, having been convicted of a willful election law offense; (3) is currently incarcerated for a felony; (4) is a primary voter who is not a member of that ballot's party; and (5) otherwise ineligible according to a specified state or federal law. *See id.*

Litigation. The district court dismissed two of the individual plaintiffs, McKenzie Nykamp Taylor and December Rust, early on for lack of standing. *Coal. for Open Democracy, et al. v. Scanlan, et al.*, No. 1:24-cv-00312-SE-TSM, ECF No. 93 at 17-19 (July 29, 2025).

Plaintiff New Hampshire Youth Movement is a nonprofit membership organization ("Youth Movement"). The district court found its core business activities to be collecting pledges-to-vote from young people, mobilizing young voters on election, and passing progressive legislation supported by young people. Order, ECF 176 at 38 (May 28, 2026).[3] It further found that Youth Movement "runs a digital program that supports these services by providing education about, among other things, how to complete the voting process." *Id.*

Plaintiff Coalition for Open Democracy ("Open Democracy" or "Coalition") is a non-profit 501(c)(3) organization. The district court found its core business activities to be campaign finance research, training, advocacy, high school voter registration events, poll observer and poll worker recruitment, and voter education. *Id.* at 41.

Plaintiff League of Women Voters of New Hampshire ("League of Women Voters") is a 501(c)(4) organization. The district court found its core business

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[3] Order, ECF 176 (May 28, 2026), is the district court's judgment that the Defendant-Appellants appeal in this case. The order is attached hereto in the Addendum.

activities to involve educating voters including by "hosting candidate forums, tabling at community events, and giving presentations to groups that request the League of Women Voters-NH to discuss issues of voting, particularly new election laws." *Id.* at 43. The League creates informational handouts and publishes information through its website and social media accounts about registration, upcoming elections, and legal changes. *Id.* at 43-44.

Plaintiff The Forward Foundation ("Forward Foundation") is a 501(c)(3) organization. Its mission is "to get more working-aged people to be civically engaged in New Hampshire." *Id.* at 45. Its core business activities seem to include voter registration, education, poll worker recruitment, and legislative reform. *See id.*

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Collectively, Youth Movement, Open Democracy, the League of Women Voters, and Forward Foundation are referred to herein as the "Organizational Plaintiffs."

Plaintiff Miles Borne is a United States citizen and resident of New Hampshire. ECF 176 at 47. He has available to him a U.S. passport and a birth certificate. *Id.* He also has a Real ID driver's license. Joint Stip. of Certain Facts, ECF 132, ¶¶ 7-8. During the course of this litigation, Plaintiff Borne used his documentary proof of citizenship to register to vote in New Hampshire. ECF 176 at 56.

Plaintiffs A.M. and L.M. are also United States citizens and residents of New Hampshire who recently turned 18. *See id.* at 46. They also have a U.S. passport and a birth certificate available to them. ECF 132, ¶¶ 16, 28. They also have a Real ID driver's license. *Id.* at ¶¶ 24-25. While they had not yet registered to vote at the time of trial in this case, the Defendant-Appellants understand them now to be registered to vote in New Hampshire. *Cf.* ECF 176 at 55 ("They will each turn 18 before the end of 2026 and intend to register to vote as soon as they are eligible.").

Collectively, Borne, A.M., and L.M. are referred to herein as the "Individual Plaintiffs."

Youth Movement is the only plaintiff in the *Youth Movement* Litigation. Open Democracy, the League of Women Voters, Forward Foundation, Borne, A.M., and L.M. are all plaintiffs in the *Coalition* Litigation.

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B. The Defendants

Defendant David M. Scanlan is a party to both lawsuits in his official capacity as New Hampshire Secretary of State. The Secretary is a constitutional officer and the state's chief elections officer. N.H. Const. pt. II, art. 67; RSA 652:23. He provides guidance to local election officials regarding implementation and execution of New Hampshire's election laws. Trial Tr., ECF 163, 107:11-17, 109:13-110:25. In addition to providing legal advice to the Secretary regarding

interpreting and executing state election law, the Attorney General provides guidance to local election officials and the public through the Election Law Unit ("ELU") and the ELU's Election Hotline. Trial Tr., ECF 160, 12:11-15:14.

Defendant John M. Formella is a party to the *Coalition* Litigation only, in his official capacity as New Hampshire Attorney General. Attorney General Formella is the state's chief legal officer and he is responsible for enforcing state election laws. RSA 7:6; RSA 7:6-c. The Attorney General also investigates allegations of wrongful voting. Trial Tr., ECF 160, 12:21-24. If the Attorney General's investigation substantiates wrongful voting, New Hampshire law authorizes the Attorney General to issue cease and desist letters, levy civil fines, and prosecute election crimes. *Id.* at 39:3-12.

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C. Background and Procedural History

Youth Movement and the *Coalition* Plaintiffs assert one substantively identical count. They allege that HB 1569's repeal of the QVA violates the First and Fourteenth Amendments to the United States Constitution by imposing an undue or unjustifiable burden on the right to vote. First Am. Compl., *N.H. Youth Movement v. Scanlan*, No. 1:24-cv-00291-SE-TSM, ECF No. 50, ¶¶ 76-81 (Mar. 18, 2025) ("*Youth Movement* Compl."); First Am. Compl., *Coal. for Open Democracy, et al. v. Scanlan, et al.*, No. 1:24-cv-00312-SE-TSM, ECF No. 85, ¶¶ 92-99 (Oct. 6, 2025) ("*Coalition* Compl."). They also seek identical remedies:

declaratory and injunctive relief, and fees and costs under 42 U.S.C. § 1988. *Youth Movement* Compl. at 32-33; *Coalition* Compl. ¶¶ 92-99.

The *Coalition* Plaintiffs assert three additional counts in their Amended Complaint. Count II alleges that HB 1569's repeal of the CVA violates the First and Fourteenth Amendments by imposing an unjustifiable burden on the right to vote. *Coalition* Compl. ¶¶ 100-104. Count III alleges that HB 1569's repeal of the CVA violates the Fourteenth Amendment by denying procedural due process to eligible voters. *Id.* ¶¶ 105-116. Lastly, Count IV alleges that HB 1569's repeal of the CVA violates the Fourteenth Amendment by denying equal protection under the law to eligible voters. *Id.* ¶¶ 117-122. Granting in part and denying in part Defendants' January 16, 2025 Motion to Dismiss (*Coalition* ECF No. 93), the district court held that the *Coalition* Plaintiffs do not have standing to assert Count IV. Order, *Coal. for Open Democracy, et al. v. Scanlan, et al.*, No. 1:24-cv-00312-SE-TSM, ECF No. 93 at 23 (July 29, 2025). The Court also held that only Plaintiff Open Democracy has standing to assert Counts II and III. *Id.* at 13.

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The district court conducted a nine-day bench trial beginning on February 9, 2026. ECF 176 at 4. The court concluded that HB 1569's repeal of QVAs imposed significant burdens upon prospective voters and that its repeal of CVAs imposed unjustifiable burdens upon challenged voters. *Id.* at 94. The court determined that those burdens outweighed the State's interests in election integrity,

voter confidence, and administrative efficiency. *Id.* at 78, 83-84. It also sustained Open Democracy's procedural due process challenge to CVA-repeal, notwithstanding its finding that there was no evidence that any voter previously used a CVA to overcome an eligibility challenge. *See id.* at 88.

On May 28, 2026, the district court issued an Order reflecting the foregoing findings of fact and rulings of law. ECF 176. It declared the challenged provisions facially unconstitutional and permanently enjoined their enforcement. *Id.* at 98. Its injunction additionally required Defendant-Appellants to restore the repealed affidavit procedures, including the forms and administrative processes associated with QVAs and CVAs. *Id.* at 97-98. Defendant-Appellants filed a timely Notice of Appeal on June 19, 2026. Defs. Not. of Appeal, ECF 181 (June 19, 2026).

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STANDARD OF REVIEW

This Court reviews a district court's rulings of law *de novo* and the district court's findings of fact for clear error. *Markham Concepts, Inc. v. Hasbro, Inc.*, 1 F.4th 74, 79 (1st Cir. 2021). This Court's *de novo* review will answer questions surrounding the district court's interpretation of the United States Constitution, federal and state law, and the legal sufficiency of the evidence upon which the district court relied in its judgment. *See Blue Cross & Blue Shield v. AstraZeneca Pharms. LP*, 582 F.3d 156, 163 (1st Cir. 2009).

This Court will not set aside the district court's factual findings except where a finding is clearly erroneous. *St. Eng'g Marine, Ltd. v. Thompson, Maccoll & Bass, LLC, P.A.*, 88 F.4th 27, 32 (1st Cir. 2023). This Court will find clear error where, on the whole of the record, the panel has a "definite and firm conviction that a mistake has been committed." *Id.* (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)) (internal quotations omitted). Mixed questions of law and fact will be governed by the predominant character of the question. *See Markham Concepts*, 1 F.4th at 79.

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SUMMARY OF ARGUMENT

The Plaintiffs have failed to prove standing. The Organizational Plaintiffs established only that New Hampshire's public repeal of two specific aspects of its state election law system have animated their core business activities, caused them to spend money educating voters about those changes, and caused them to engage in more or different voter-education efforts. Under this Court's decision in *Greater Boston Legal Services v. United States Department of Homeland Security*, __ F.4th __, 2026 U.S. App. LEXIS 33177, at *16-*19 (1st Cir. Oct. 29, 2026), these are not Article III injuries sufficient to confer standing.

Youth Movement has also failed to prove associational standing because it named no member who faced a certainly impending, concrete, and particularized

injury, QVA-repeal is not germane to its mission, and individual member participation is necessary with respect to the claim it asserts.

The Individual Plaintiffs also failed to prove standing. Each possessed documentary proof of citizenship since the inception of this litigation. They could only execute a QVA when registering to vote if they could represent under the penalties of voter fraud that they are not in possession of a document to prove citizenship. Consequently, any alleged injury to the Individual Plaintiffs has always been too impermissibly speculative or attenuated to create an Article III injury. *Clapper v. Amnesty, Int'l USA*, 568 U.S. 398, 410 (2013).

The Plaintiffs have also failed to prove a facial unconstitutional burden on the right to vote. New Hampshire's election system applies to all voters across the electorate. It imposes at most a minimal burden on the right to vote by requiring voters to bring documentary proof of citizenship with them when registering to vote and changing the challenged voter procedure in a manner that allows for judicial review. New Hampshire's important and legitimate state interests in election integrity, voter confidence, and administrative efficiency amply justify the new system. Accordingly, New Hampshire's election system does not require QVAs and CVAs in order to meet federal constitutional standards.

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Finally, the *Coalition* Plaintiffs' procedural due process challenge to the challenged-voter system fails. New Hampshire's present system affords adequate procedural due process to voters through immediate judicial review.

Accordingly, the district court's decision below should be reversed, its injunction should be vacated, and the matter should be remanded with instructions to the district court to enter judgment in favor of the Defendant-Appellants and close the case.

ARGUMENT

I. Plaintiffs lack standing to maintain their claims.

"No principle is more fundamental to the judiciary's proper rule in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases and controversies." *Dantzler, Inc. v. Empresas Berrios Inventory & Operations, Inc.*, 958 F.3d 38, 46 (1st Cir. 2020) (brackets and quotation marks omitted). "To assure respect for this limitation, plaintiffs must establish that they have standing to sue." *Id.* (cleaned up). This "serves to prevent the judicial process from being used to usurp the powers of the political branches and confines the federal courts to a properly judicial role." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (citations and quotation marks omitted).

"[T]he irreducible constitutional minimum of standing consists of three elements." *Id.* (citation and quotation marks omitted). "The plaintiff must have

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(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Id.* (citation omitted). "The plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing these elements." *Id.* (citation omitted).

"Since [these] are not mere pleading requirements but rather an indispensable part of the plaintiff's case, each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of litigation." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). "When, as now, standing is reviewed after trial, the facts establishing standing 'must be supported adequately by the evidence adduced at trial.'" *Me. People's All. v. Mallinckrodt, Inc.*, 471 F.3d 277, 283 (1st Cir. 2006) (quoting *Lujan*, 504 U.S. at 561). "The ultimate quotient of proof is a preponderance of the evidence." *Id.* (citation omitted).

"The existence vel non of standing is a legal question and, therefore, engenders de novo review." *Id.* "When, however, the trial court's standing determination rests on findings of fact, [this Court] must honor those factual findings unless they are clearly erroneous." *Id.*

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A. The Organizational Plaintiffs have not established standing because they have not proven any direct injury or impairment to their core business activities.

The district court concluded that the Organizational Plaintiffs have "organizational standing" to sue on their own behalf. This Court's recent decision in *Greater Boston Legal Services v. United States Department of Homeland Security*, __ F.4th __, 2026 U.S. App. LEXIS 33177, at *16-*19 (1st Cir. Oct. 29, 2026), requires reversal of that conclusion.

"[O]rganizations may have standing to sue on their own behalf for injuries they have sustained." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 393 (2024) (citation omitted) ("*AHM*"). "In doing so, however, organizations must satisfy the usual standards for injury in fact, causation, and redressability that apply to individuals." *Id.* at 393–94 (citation omitted).

Where an organization challenges a law that does not directly regulate it, the organization's standing "is ordinarily substantially more difficult to establish." *Id.* at 382 (quotations omitted). Where a law does not directly regulate an organization, injury-in-fact requires direct operational interference with core business activities. *See League of Women Voters of Mass. v. Trump*, No. 26-2029 (Consol.), 2026 U.S. App. LEXIS 27790, at *33 (1st Cir. Sep. 10, 2026) (citing *AHM*, 602 U.S. at 395 and *Havens Realty Corp. v. Coleman*, 455 U. S. 363, 379 (1982)).

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Injury-in-fact notwithstanding, the Supreme Court has explained that an organization's principal obstacle to direct standing often lies in causation: "that is, linking their asserted injuries to the government's regulation … of someone else." *See AHM*, 602 U.S. at 382-83 (collecting cases). An organization cannot adequately prove causation by "rely[ing] on speculation about the unfettered choices made by independent actors not before the courts." *See id.* at 383. So, "to thread the causation needle in those circumstances, the plaintiff must show that the 'third parties will likely react in predictable ways' that in turn will likely injure the plaintiffs." *Id.* (quoting *California v. Texas*, 593 U.S. 659, 675 (2021)).

A non-regulated organization may thread the causation needle by establishing that a law perceptibly ***impaired*** the organization's core business activities. *See id.* at 395. The perceptible impairment framework requires a showing of: (1) a concrete and demonstrable ***injury*** to an established core activity; (2) resulting in an involuntary "drain" on resources caused by the challenged law's operational interference with the core activity. *See Havens*, 455 U.S. at 379; *AHM*, 602 U.S. at 394-96; *Conn. Parents Union v. Russell-Tucker*, 8 F.4th 167, 173-74 (2d Cir. 2021); *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 919 (D.C. Cir. 2015). This means that

> the ***consequent*** "drain" on resources must go beyond normal operating costs—that is, an organization does not suffer an injury in fact where it "expend[s] resources to educate its members and others" unless doing

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> so subjects the organization to "operational costs ***beyond those normally expended***."

Military-Veterans Advocacy v. Sec'y of Veterans Affairs, 7 F.4th 1110, 1129 (Fed. Cir. 2021) (quoting *Nat'l Taxpayers Union v. United States*, 68 F.3d 1428, 1434 (D.C. Cir. 1995)) (emphasis added).

1. None of the Organizational Plaintiffs have suffered injury-in-fact.

"*Havens*' core-business-activities exception cannot mean" that any voter education organization like all of the Organizational Plaintiffs "may assert organizational standing" by alleging that a State's public change to an election law increases the cost of its voter education efforts or requires it to undertake more or different educational activities than it did previously. *See Greater Bost. Legal Servs.*, 2026 U.S. App. LEXIS 33177, at *18-19. If such injuries were enough for Article III standing, any organization that educates persons about the law as one of its core business activities would have standing to challenge any change in the law on which it educates as unconstitutional, because it must update materials, increase educational efforts, and/or divert resources from one set of goals to the goal of providing new or updated education on the law changes. If this Court were to accept this "theory of standing in this case," it would "functionally eliminate the Article III standing requirements" for any organization that educates others about the law and that seeks to invalidate government policies with which it disagrees.

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See id. at *20. That cannot be what the Supreme Court had in mind as falling within the *Havens*' context.

The district court concluded that Open Democracy met its burden to prove an injury-in-fact for organizational standing because it had:

- "spent money and devoted staff time to updating and creating new materials to help high schools promote and run their registration drives to account for HB 1569's elimination of the QVA," ECF 176 at 50-51;
- been able to help fewer high school students register to vote, because students did not possess the necessary DPOC," *id.* at 51; and
- "needed to expand its poll observer program and update its materials related to the program after HB 1569's enactment to account for both the elimination of the QVA and the CVA." *Id.*

The district court similarly concluded that Youth Movement established an injury-in-fact for organizational standing because it had:

- "been forced to augment its programs since HB 1569's passage, including by changing its materials and messaging, and adding new processes and programs," *id.* at 53; and
- "devote[d] staff time … particularly by sending additional staff members to voter registration events, which had not been as much of a focus for Youth Movement in the past because the QVA made it relatively likely that qualified voters would be able to register," *id.*

The district court found that Youth Movement's programmatic augmentation and additional staff time applied to its pledge-to-vote program because the organization must "take additional steps that it did not have to take before to ensure that the voters it assists ultimately vote" and to its get-out-the-vote program "because some

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of the voters Youth Movement has assisted in the past, absent intervention, would be unable to vote." *Id.*

The district court concluded that the League of Women Voters suffered an injury-in-fact for organizational standing because it:

- "spent time and money creating and expanding the reach of social media posts relating to HB 1569's elimination of the QVA and creating new educational materials," *id.* at 54;
- "did several presentations to various groups regarding HB 1569's changes to New Hampshire's election law," *id.*; and
- could not teach voters the meaning of "other reasonable documentation" because it could not discern the definition, *id.*

In this same vein, the district court concluded that Forward Foundation had established an injury-in-fact because it:

- "update[d] its mailers to address HB 1569's changes to the proof-of-citizenship requirements and spent money expanding its text and mailer campaigns," *id.*; and
- "reallocated its resources, such as staff time, to work on registration education at the expense of its other activities," *id.*

All of the above constitute ordinary expenditures and efforts the Organizational Plaintiffs have undertaken or incurred, consistent with their core business activities, as a result of public policy changes to New Hampshire's election laws. Ordinary expenditures that are consistent with an organization's mission are not injuries to the organization sufficient to confer standing. *AHM*,

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602 U.S. at 395.[4] To hold that a routine and expected expense establishes "a cognizable injury[,] would be to imply standing for organizations with merely 'abstract concern[s] with a subject that could be affected by an adjudication.'" *Lane v. Holder*, 703 F.3d 668, 675 (4th Cir. 2012) (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 40 (1976)). Moreover, "[w]hen a nonprofit merely expands its operations to address increased demands in the communities it serves, its activities have not been tampered with." *Coal. for Humane Immigrant Rights v. United States Dep't of Homeland Sec.*, 780 F. Supp. 3d 79, 90 (D.D.C. 2025).

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It is undisputed that the Coalition educated the public, facilitated voter registration with events, and recruited poll observers, and it continues to do so, unabated. *See, e.g.*, Trial Tr., ECF 143 at 26-31. It conducted 41 high school drives in 2024, 15 in the 2025 off-year election, and its goal for 2026 is "every high school in the state," limited only by "as many as we're invited to participate with." *Id.* at 22:24-23:9. These drives are funded by a grant that totaled $90,000 in 2025 and $92,500 in 2026. *Id.* at 24:15-19. That the Coalition will continue to

[4] *See also Plotkin v. Ryan*, 239 F.3d 882, 886 (7th Cir. 2001) ("[O]rdinary expenditures as part of an organization's purpose do not constitute the necessary injury-in-fact required for standing."); *Coal. for Humane Immigrant Rights v. Dep't of Homeland Sec.*, 780 F. Supp. 3d 79, 88 (D.D.C. 2025) ("[I]t is not enough if the organization merely diverts its resources in response to a defendant's actions such that it has not been subjected . . . to operational costs beyond those normally expended to fulfill its core aims."); *NAACP v. City of Kyle*, 626 F.3d 233, 238 (5th Cir. 2010) (explaining that resource-diversion must reflect differences from routine activities); *Deep S. Ctr. for Env't Just. v. EPA*, 138 F.4th 310, 320 (5th Cir. 2025).

engage in these activities, but focus its efforts on the effects of HB 1569, is not a direct operational interference with Open Democracy's core business activities that amounts to an injury-in-fact sufficient to confer standing.

Similarly, Youth Movement educates the public, encourages youth voting, and facilitates voter registration events, and it continues to do so, unabated. *See, e.g.*, Trial Tr., ECF 150 at 53-57. For example, its executive director testified that "we can still collect Pledge to Votes[.]" *Id.* at 53:20-21. Youth Movement may make some changes to the documents and services it provides as part of these programs. *See, e.g.*, *id.* at 67:15-17; 54:1-13. But Youth Movement failed to demonstrate how any of these activities are anything other than ordinary and expected expenses of public education and outreach. *See AHM*, 602 U.S. at 395; *Coal. for Humane Immigrant Rights v. United States Dep't of Homeland Sec.*, 780 F. Supp. 3d 79, 90 (D.D.C. 2025).[5]

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For their part, the League and Forward Foundation, at most, established that they expended money and conducted training and outreach related to HB 1569's changes to the law. ECF 176 at 54. But like the other organizations, these resource allocations are voluntary, ordinary expenditures, consistent with their core

[5] At least some of these purported injuries—including that "some of the voters Youth Movement has assisted in the past [relied on] QVAs" and "absent intervention, would be unable to vote," ECF No. 176 at 53, and Youth Movement's purported need to implement new programs, *id.*—are also too hypothetical and remote to satisfy the injury-in-fact requirement. *See Lujan*, 504 U.S. at 583.

missions and core business activities, that both entities would otherwise engage in even in the absence of HB 1569. They are not evidence of direct operational interference with either entity's core business activities sufficient to be deemed an injury or impairment. They are therefore insufficient to establish the injury-in-fact requirement of Article III standing.

In concluding otherwise, the district court relied heavily on a broad reading of the Supreme Court's decision in *Havens Realty*. The district court's reliance on *Havens Realty* in this regard was misplaced. *Havens Realty* concerned, in part, "the scope of standing to sue under the Fair Housing Act of 1968." 455 U.S. at 366. *Havens Realty* was alleged to have engaged in "racial steering" in violation of § 804 of the Fair Housing Act. *Id.* HOME, a non-profit corporation, that provided "housing counseling service" and "investigation and referral of complaints concerning housing discrimination," *id.* at 368, alleged that these illegal racial steering practices "had frustrated the organization's counseling and referral services, with a consequent drain on resources." *Id.* at 369. The district court dismissed the claims of the plaintiffs below (two individuals and HOME), in part, for lack of standing. *Id.* The plaintiffs appealed, and the Fourth Circuit reversed and remanded for further proceedings finding, in part, that HOME's allegations "were sufficient, at the pleading stage, to afford the organization standing both in

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its own capacity and as a representative of its members." *Id.* at 370. The Supreme Court granted certiorari to review the matter.

In reviewing HOME's organizational standing, the Supreme Court concluded that HOME's allegations established at the pleading stage an injury-in-fact sufficient to confer standing. *Id.* at 379. Specifically, HOME asserted that the defendants' "racial steering practices," illegal, false information practices under federal law that had to be discovered through testers, were frustrating "its efforts to assist equal access to housing through counseling and other referral services." *Id.* (internal quotations omitted). As a consequence, HOME alleged that it had to "devote significant resources ***to identify and counteract***" these illegal practices. *Id.* (internal quotations omitted) (emphasis added).

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The Organizational Plaintiffs' proof in this case is not comparable to the allegations in *Havens Realty*. Whereas "Havens had provided HOME's black employees false information about apartment availability," *AHM*, 602 U.S. at 395, neither the Defendants here nor the State of New Hampshire generally have provided false information to the Organizational Plaintiffs. The Organizational Plaintiffs' claims in this case concern a publicly debated repeal of existing portions of New Hampshire's election laws—a transparent, public act that is not false or illegal and that the Organizational Plaintiffs did not have to devote meaningful resources to identify and uncover.

Additionally, the Supreme Court made clear in *Havens Realty* that "[i]f, as broadly alleged, petitioners' steering practices have perceptibly impaired HOME's ability to provide counseling and referral services for low- and moderate-income home-seekers, there can be no question that the organization has suffered injury in fact." *Id.* at 379. As the Supreme Court has explained, "Havens's actions directly affected and interfered with HOME's core business activities—not dissimilar to a retailer who sues a manufacturer for selling defective goods to the retailer." *All. For Hippocratic Med.*, 602 U.S. at 395.

The Organizational Plaintiffs proved nothing comparable here. They were on notice of public changes to state election law. They reacted to those public state law changes consistent with their core missions and core business activities. They are not similar to a counseling and referral service whose employees have been provided false information that impairs that service's ability to provide accurate and useful counseling and referral services.

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As the Supreme Court has emphasized, "*Havens* was an unusual case, and this Court has been careful not to extend the *Havens* holding beyond its context." *Id.* at 393-94. The district court failed to explain why this case—which bears little resemblance to *Havens Realty*—falls within that fact- and case-specific exception to the general rules of organizational standing. And this Court's recent decision in

Greater Boston Legal Services makes clear that this case bears no resemblance to *Havens Realty*.

This case also bears no similarity to this Court's decision in *League of Women Voters of Massachusetts v. Trump*, __ F.4th __, 2026 U.S. App. LEXIS 27790. In that case, the chaos created by the challenged rule's immediate deadlines for mailed ballots significantly interfered with the organizational plaintiffs' mission to provide their members with accurate and reliable information about how to vote by mail. 2026 U.S. App. LEXIS 27790, *31-32. The plaintiff's injury was not a resource drain. *Id.* *33-34. Rather, the timing of the federal regulation directly interfered with the operation of the plaintiff's core service. *Id.* In this case, the New Hampshire election law changes at issue went through the normal, public legislative process, were thereafter subject to challenge, and were thereafter subject to trial. Unlike *Havens Realty* and *League of Women Voters of Massachusetts*, which were "unusual" cases, this case is an ordinary case of one state making changes to its election laws utilizing its ordinary public process on an ordinary timeline.

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The facts here are much more akin to those in *Hippocratic Medicine* and *Greater Boston Legal Services*. In *Hippocratic Medicine*, pro-life medical associations and doctors challenged relaxed regulatory requirements for an abortion drug. *AHM*, 602 U.S. at 373. The associations asserted that the FDA

"forced" them to advocate and educate the public. *Id.* at 394. They alleged that this would cause considerable resource reallocation "to the detriment of other spending priorities." *Id.* The Supreme Court held that the organizations did not have standing because "[a] plaintiff must show 'far more than simply a setback to the organization's abstract social interests.'" *Id.* (quoting *Havens*, 455 U. S. at 379, n.19).

Similarly, in *Greater Boston Legal Services*, this Court explained that an organization cannot claim *Havens Realty* standing where the organization's alleged injury is additional expenses or efforts incurred in response to a particular policy. *Greater Bost. Legal Servs.*, 2026 U.S. App. LEXIS 33177, at *16-17. Such an alleged injury does not impede an organization's core business activities, but is instead "a feature of the battle" the organizations "have volunteered to fight." *Id.* at *17. Such a fact pattern does not present the "unusual case" for the application of *Havens Realty* standing. *See id.* at *17-18.

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These holdings control here. The Organizational Plaintiffs are all capable of still performing their core missions and core business activities despite the state law change they challenge. The real issue is that the Organizational Plaintiffs disagree with the state law change at issue as a policy matter and believe the resulting state election system to be unconstitutional. They are trying to manufacture standing from the ordinary business efforts they would undertake if

New Hampshire law changed in a way with which they did not disagree. Consequently, the Organizational Plaintiffs have failed to prove an injury sufficient to give them Article III standing.

2. The Organizational Plaintiffs did not establish a causal nexus between HB 1569 and a cognizable injury-in-fact.

The Organizational Plaintiffs have also failed to establish causation. Article III requires much more than an inferential relationship between a challenged law and a plaintiff's response. *See AHM*, 602 U.S. at 381. The Organizations' responses must be cognizable injuries-in-fact (as discussed above), and the injuries-in-fact must be fairly traceable to HB 1569. *See id.* at 382. "The injury in fact requirement prevents the federal courts from becoming a vehicle for the vindication of the value interests of concerned bystanders." *Id.* So, even if HB 1569 was the impetus for the Organizational Plaintiffs to update materials, expand outreach, or reallocate staff time, standing alone, that does not establish HB 1569 as the ***cause*** of a cognizable injury to the Organizations. *See Havens*, 455 U.S. at 379; *AHM*, 602 U.S. at 394-95. HB 1569 must directly interfere with a core activity. *See id.*

The Organizations challenge HB 1569, but they do not contend that HB 1569 imposes any legal duty upon them. *See* ECF 176 at 3-4. Nevertheless, the district court found that HB 1569's repeal of QVAs and CVAs "***forced*** Open Democracy to divert resources that it would otherwise have spent on its other core

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activities, such as campaign finance research, to address the consequences of HB 1569." *Id.* at 51 (emphasis added). The court held that "Open Democracy has suffered a legally cognizable injury from HB 1569's eliminations of the QVA and CVA." *Id.* The court similarly held that HB 1569 caused injury to each of the other Organizations. *Id.* at 53 ("There is a clear causal nexus between Youth Movement's injuries and HB 1569's elimination of the QVA."), 54-55 ("And, for the reasons discussed above, both organizations can satisfy the causation and redressability prongs of the standing analysis. Therefore, the League of Women Voters-NH and the Forward Foundation have standing to pursue Count I.").

The district court erred in at least one critical way. The court's characterization of the Organizations' expenditures as "forced" and "clear[ly] causal," are merely conclusory. The court did not identify an impaired activity, which must be the antecedent that establishes an expenditure or resource diversion as involuntary. *See AHM*, 602 U.S. at 394-95. In other words, the Organizations' responses to HB 1569 cannot simultaneously supply both injury and causation. An organization "cannot spend its way into standing simply by expending money," because a plaintiff could contrive an injury (resource-drain) to bootstrap the injury's cause (change in the law), to manufacture standing. *See Ariz. All. for Retired Ams. v. Mayes*, 186 F.4th 622, ____, 2026 U.S. App. LEXIS 23880, *18-19 (9th Cir. Aug. 7, 2026) (en banc).

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A resource-drain must be an involuntary ***consequent*** of the challenged action, not a voluntary ***response*** to it. *See Havens*, 455 U.S. at 379; *AHM*, 602 U.S. at 394-96; *Conn. Parents Union*, 8 F.4th at 173-74; *Food & Water Watch*, 808 F.3d at 919. The Organizational Plaintiffs have failed to prove this and therefore do not have standing to challenge HB 1569's repeal of either QVAs or CVAs.

B. Youth Movement has not established associational standing because it has not named any member with standing to sue in his or her own right.

Youth Movement also invoked so-called "associational standing" as a basis to proceed on its claims. The district court did not reach this issue, as it found that Youth Movement had organizational standing. Because this is an erroneous conclusion, and because standing presents a question of subject-matter jurisdiction, this Court must "inquire *sua sponte*" into "whether [Youth Movement] has constitutional standing to sue[.]" *Fideicomiso de la Tierra del Cano Martin Pena v. Fortuno*, 604 F.3d 7, 16 (1st Cir. 2010) (citation and quotation marks omitted). Youth Movement has not satisfied its burden to establish associational standing.

To proceed in a representational capacity, Youth Movement must prove three things. First, at least one of its members must have standing to sue in his or her own right. *See Equal Means Equal v. Ferriero*, 3 F.4th 24, 27-28 (1st Cir. 2021). Youth Movement must have specifically named that member in this

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lawsuit. *See Draper v. Healey*, 827 F.3d 1, 3 (1st Cir. 2016). Second, QVA-repeal must be germane to Youth Movement's purpose. *See Housatonic River Initiative v. EPA*, 75 F.4th 248, 264-65 (1st Cir. 2023). Third, neither the claim nor the relief Youth Movement seeks can require its members to participate individually. *See id.* Youth Movement has failed to establish all three components.

It is Youth Movement's burden to establish that its named members have concrete and particularized injuries that are actual or imminent—not speculative—"meaning that the injury must have already occurred or be likely to occur soon." *See AHM*, 602 U.S. at 381. The "'threatened injury must be ***certainly impending*** to constitute injury in fact,'" and "'[a]llegations of possible future injury' are not sufficient." *Clapper*, 568 U.S. at 409 (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990) and collecting cases)) (emphasis in original). Imminence "cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes[.]" *Id.* (quotations omitted).

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Youth Movement has not named a member who faces a certainly impending, concrete, and particularized injury caused by the repeal of QVAs, or that restoration of QVAs would afford them relief. Members Ms. Montagano, Ms. Sumner, Ms. Barry, Mr. Wyman, and Ms. Musick are registered New Hampshire voters. ECF No. 50, ¶¶ 20-25; Trial Tr., ECF 150, 52:8-53:6; Trial Tr., ECF 154, 11:6-11, 19:2-20:8, 29:4-9, 37:23-38:21. As such, they will never again present

DPOC, so they will never use QVAs. This is true even if the members were to re-register, should they move to another town or ward in the state, or even if they move out-of-state and re-domicile in New Hampshire many years later. *See* RSA 654:12, I(a). Under New Hampshire law, evidence of their prior voter registration is proof of citizenship—they cannot be required to prove it a second time. *Id.* Clerks and supervisors will find proof of their prior registration in the SVRS and voting records. RSA 654:12, I(a), III & VI. As a matter of law, none of the members have suffered an injury-in-fact, nor will they suffer an injury-in-fact at any time in the future.[6] And because they will never present DPOC in the future or use a QVA, QVA-restoration does not afford them relief from any conceivable harm. Accordingly, the named members do not have individual standing to challenge HB 1569's QVA-repeal, so Youth Movement cannot establish associational standing on behalf of its members.

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Youth Movement has also failed to demonstrate that the QVA-repeal is germane to its mission. An organization engaged in a lawsuit that is not germane to its organizational purpose does not have standing to represent its members in the

[6] Ms. Musick registered to vote while this lawsuit was pending. Notwithstanding, she did not have standing at any time because she possessed DPOC. Indeed, she used DPOC to register to vote, so she could not have been injured by the repeal of QVAs—she did not need one to register. Alternatively, Ms. Musick's claim was moot upon her registration for the same reasons explained below regarding the Individual Plaintiffs' failure to maintain a live controversy in this case. Whether lacking standing or on mootness grounds, the result is the same. None of the named members face imminent threat of injury-in-fact caused by the repeal of QVAs.

lawsuit. *See Council of Ins. Agents & Brokers v. Juarbe-Jimenez*, 443 F.3d 103, 108 (1st Cir. 2006). The lawsuit's objective must align with the organization's core purpose. *See Me. People's All. v. Mallinckrodt, Inc.*, 471 F.3d 277, 283 (1st Cir. 2006). Germaneness asks whether a lawsuit reasonably tends "to further the general interests that individual members sought to vindicate in joining the association and … bears a reasonable connection to the association's knowledge and experience." *Saget v. Trump*, 375 F. Supp. 3d 280, 336 (E.D.N.Y. 2019) (quoting *Bldg. & Constr. at Trades Council & Vicinity v. Downtown Dev., Inc.*, 448 F.3d 138, 149 (2d Cir. 2006)) (internal quotations omitted). So, Youth Movement must offer evidence that this lawsuit's goals serve the *ex ante* aims that its members understood they would advance by joining. *See Housatonic River*, 75 F.4th at 265 (citing *Hunt*, 432 U.S. at 343). It has not done so.

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Youth Movement's mission is "to build the power and influence of young people." Trial Tr. ECF 150 at 9:10-15. Its goals include "turning out young voters and electing young down-ballot champions to office." *Id.* at 15:14-19. Its activities target making it easier for young people to vote. *Id.* at 18:6-10. Youth Movement has between 70 and 80 members. *Id.* at 13:15-18. The members are young people who attend events and vote on which candidates Youth Movement should endorse and what political issues Youth Movement should "organize around." *Id.* at 13:5-14. Youth Movement is undoubtedly interested in voter

turnout, but there is no evidence that its members joined to challenge state voter eligibility verification laws. It produced two members at trial, Kara Montagano and Tess Sumner. Ms. Montagano testified that she joined Youth Movement in college for political advocacy reasons. *See id.* at 9:21-10:20. Ms. Sumner testified that she joined Youth Movement in high school, also for political advocacy and advocacy training. *See id.* at 27:17-28:20. Neither mentioned Youth Movement's litigation or election monitoring activities as reasons they joined. Youth Movement's facial challenge to a law repealing QVAs as one accepted proof of citizenship is too remote from the members' interests to be germane.

Youth Movement's claims also require its members to participate individually. Associational standing does not extend to an organization where its challenge to a state law requires member-participation. *Council of Ins. Agents & Brokers*, 443 F.3d at 108. This is a prudential test. *Pharm. Care Mgmt. Ass'n v. Rowe*, 429 F.3d 294, 306 (1st Cir. 2005).

Youth Movement asked the court to enjoin HB 1569's repeal of QVAs as accepted proof of citizenship when registering to vote. Typically, individual member participation is not required in cases that seek only prospective relief. *See, e.g.*, *Coll. of Dental Surgs. of P.R. v. Conn. Gen. Life Ins. Co.*, 585 F.3d 33, 41 (1st Cir. 2009). However, the circumstances of members Montagano, Sumner, Barry, Wyman, and Musick materially vary. To determine whether Youth Movement's

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members suffered cognizable injuries by QVA-repeal—and whether reinstatement would redress those injuries—the district court should have evaluated individualized factual circumstances for each allegedly affected member. *Cf. Warth v. Seldin*, 422 U.S. 490, 516 (1975) (explaining that a prospective associational remedy must be "common to the entire membership" or "shared by all in equal degree"). Like the organizational plaintiff seeking damages in *Warth v. Seldin*, individual members must participate because "whatever injury may have been suffered is peculiar to the individual member concerned." *Id.* at 515.

Moreover, the *Warth* plaintiff's prospective relief "failed to show the existence of any injury to its members of sufficient immediacy and ripeness to warrant judicial intervention." *Id.* at 516. Such is the case here. All five members are registered New Hampshire voters, so they do not have to provide DPOC in New Hampshire. They therefore would not need QVAs. Accordingly, Youth Movement members' participation is required to challenge QVA-repeal of and to seek reinstatement of the prior affidavit statutory scheme.

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C. The Individual Plaintiffs failed to prove their Article III standing.

The Individual Plaintiffs must also satisfy the injury-in-fact, causation, and redressability requirements for Article III standing. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). Where a plaintiff sues, anticipating enforcement of the challenged law, the plaintiff must prove that injury is "certainly impending" or that

the plaintiff faces a "substantial risk" of injury. *Reddy v. Foster*, 845 F.3d 493, 500 (1st Cir. 2017) (citations omitted). None of the Individual Plaintiffs satisfied these requirements.

Miles Borne was born in Portsmouth, New Hampshire in 2007 and he was under the age of 18 at the time he filed the Complaint. ECF 132, ¶¶ 1-2. Mr. Borne possesses both a U.S. passport and a birth certificate, and he keeps them in a fireproof box at his home in Rye, where he lives with his parents. *Id*. at ¶ 4. His New Hampshire birth certificate was issued on January 26, 2009, and he and his parents have maintained possession of this document ever since. *Id*. at ¶ 5. He also holds a New Hampshire-issued Real ID-compliant driver's license. *Id*. at ¶¶ 7-8.

A.M. and L.M. were both born in Austin, Texas in 2008 and they were under the age of 18 at the time they filed the Complaint. *Id.* at ¶ 15. They live in Hanover, New Hampshire with their parents, where they keep their passports and birth certificates in a safe in the basement. *Id.* at ¶¶ 16, 28. They both have New Hampshire-issued Real ID-compliant driver's licenses. *Id.* at ¶¶ 24-25.

None of the Individual Plaintiffs have proven that they have standing to challenge QVA-repeal. They all possess and know where to find their passports and birth certificates. They do not need a QVA to register to vote because they possess multiple DPOC documents.

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Moreover, it is highly speculative whether they ever would have been able to use a QVA to register to vote. The QVA form requires a person to "swear and affirm, under the penalties for voting fraud set forth below, that I am not in possession of some or all of the documents necessary to prove my identity, citizenship, and age . . . ." Defs. Ex. SS at SOS-482742. As stated above, the Individual Plaintiffs all possess U.S. passports and birth certificates. Thus, at best, the Individual Plaintiffs' standing has always rested upon "a highly attenuated chain of possibilities" that "does not satisfy the requirement that threatened injury must be certainly impending" and does not meet "the requirement that any injury in fact must be fairly traceable" to HB 1569. *Clapper*, 568 U.S. at 410-11.

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Additionally, since each Individual Plaintiff possesses a Real ID, Division of Motor Vehicle records, which are available to supervisors of the checklist, city registrars and deputy registrars, and town or city clerks and their deputies through the SVRS, will be able to confirm the Individual Plaintiffs' citizenship. RSA 654:12, VI, 654:45, IV(c). This confirmation is less burdensome than a registrant having to read and sign a QVA under penalties of voter fraud. Also, since Mr. Borne was born in New Hampshire, as a matter of law, he has additional effort-free resources that will verify his citizenship without him having to present DPOC. *See id.* (requiring SVRS-access to state vital records data); Trial Tr. ECF 162, 125:1-18.

In short, the Individual Plaintiffs have never been subject to any impending harm fairly traceable to HB 1569. Accordingly, their complained-of injuries are not remedied by the restoration of QVAs, which the district court ordered in this case.

II. New Hampshire's election system imposes facially constitutional valid voting conditions after QVA and CVA repeal.

Plaintiffs' facial constitutional challenges to New Hampshire's election system after the repeal of QVAs and CVAs fail on the merits. Requiring all persons in New Hampshire to register to vote by producing documentary proof of citizenship at the time of registration or in response to a challenge imposes a minimal, ordinary burden on New Hampshire voters that the State's important and legitimate interests in election integrity, voter confidence, and administrative efficiency amply justify. These electorate-wide state law requirements cannot be set aside on their face simply because some voters may experience a more significant burden than most voters. In such cases, as-applied challenges and remedies are more appropriate than facial invalidation of a state election law. The district court's conclusions and overbroad electorate-wide remedies conflict with United States Supreme Court precedent and must be reversed.

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A. Plaintiffs' facial challenges fail because New Hampshire's current election system has a plainly legitimate sweep; it imposes a minimal burden on the right to vote that is amply justified by the State's legitimate regulatory interests.

Plaintiffs' facial constitutional challenge to New Hampshire's election system after QVA and CVA-repeal fails as a matter of law. "[A] plaintiff can only succeed in a facial challenge by 'establish[ing] that no set of circumstances exists under which the Act would be valid,' *i.e.*, that the law is unconstitutional in all of its applications." *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008) (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)). While some Supreme Court Justices have criticized this formulation, "all agree that a facial challenge must fail where the statute has a 'plainly legitimate sweep.'" *Id.*

The Supreme Court disfavors facial challenges because they often rely upon speculation and barebone facts, risk premature statutory interpretation, may cause a court to anticipate constitutional questions or to formulate broader constitutional rules than necessary, and threaten to short-circuit the democratic process. *Id.* at 450-51. Plaintiffs "bear a heavy burden of persuasion" when they ask a court to invalidate a state law in all its applications. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 200 (2008) (plurality).

In determining whether a law is facially invalid, a court may not go beyond the law's facial requirements—it must not "speculate about 'hypothetical' or 'imaginary' cases." *Wash. State Grange*, 552 U.S. at 449-50. On its face, RSA

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654:12 (as amended), is generally applicable, nondiscriminatory, and does not impose excessively burdensome requirements on any class of voters. As such, it has a plainly legitimate sweep. *See Crawford*, 553 U.S. at 202 (plurality). HB 1569 applies to all voters—no one is permitted to self-verify through QVAs or CVAs. *See* ECF No. 176 at 67 (noting QVA-repeal "impacts voters as a whole"). The trial court did not cite any record evidence of an identifiable individual or identifiable group who cannot register or vote without access to a QVA to prove citizenship or a CVA to overcome a successful voter challenge.

To the extent that Plaintiffs offered evidence of harm caused by QVA and CVA repeal, the harm reflected ordinary and widespread inconveniences, *i.e.*, voters being required to locate and produce documentary proof of their eligibility to vote. This was essentially the very same subject of the United States Supreme Court's decision in *Crawford*. *See Crawford*, 553 U.S. at 198-199 (discussing a requirement that could require travel to a government office for identification). And as the district court acknowledged, Defendants offered evidence of the State's legitimate interest in ensuring election integrity, safeguarding voter confidence, and protecting the public fisc. ECF No. 176 at 72-73. The district court should have ended the inquiry there. Even if there were a small subset of the population that could experience burdens greater than most of the general public, that would be insufficient to invalidate the entirety of a duly enacted law on its face. *See*

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Crawford, 553 U.S. at 203 ("Finally we note that petitioners have not demonstrated that the proper remedy—even assuming an unjustified burden on some voters—would be to invalidate the entire statute.").

Nevertheless, the district court shifted its focus to a small subset of voters who may hypothetically experience a more significant burden following QVA and CVA repeal. *See, e.g.*, ECF No. 176 at 67 ("Although HB 1569's elimination of the QVA to prove citizenship impacts voters as a whole, it places an especially heavy burden on certain groups of voters."). The district court tried to draw a distinction between "the group for whom the law is a restriction, not the group for whom the law is irrelevant." ECF No. 176 at 60 n.20 (quoting *City of L.A. v. Patel*, 576 U.S. 409, 418 (2015) (analyzing the application of a law permitting warrantless searches)). But New Hampshire's election law system following QVA and CVA repeal applies to all New Hampshire voters and therefore imposes a restriction with respect to all of them.

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In the context of a facial constitutional challenge to a generally applicable election law system, the *Anderson-Burdick* framework does not permit a district court to select only a subset of voters for inclusion on the burden-side of the analysis. *See Crawford*, 553 U.S. at 206 (Scalia, J., concurring). Indeed, "[t]hat was essentially the approach of the *Burdick* dissenters, who would have applied strict scrutiny to the laws because of their effect on 'some voters.'" *See Crawford*,

553 U.S. at 206 (Scalia, J., concurring) (quoting *Burdick v. Takushi*, 504 U.S. 428, 446 (1992) (Kennedy, J., dissenting)). Consequently, because this case "involves a facial challenge," the trial court cannot declare New Hampshire's election system facially unconstitutional "based on the mere possibility" that a certain unidentified subset of voters may face an indeterminable and untested level of burden greater than the minimal burden most members of the electorate will face. *See Wash. State Grange*, 552 U.S. at 455.

The district court's order reflects the dangers that make facial challenges disfavored. The record shows that the vast majority of eligible voters in New Hampshire can satisfy New Hampshire law's documentary proof of citizenship requirement—more than 98.33%, according to Plaintiffs' expert Professor Michael Herron. *See* ECF No. 157 at 13:2-6, 20:11-15 (explaining that 1.67% non-possession rate includes eligible voters who are already registered to vote). Since the State has an indisputable interest in counting only the votes of eligible voters, New Hampshire's documentary proof of citizenship requirement must have at least a substantial number of constitutional applications. The trial court, however, relied on speculative burdens experienced by non-parties where the facts of those purported burdens were undeveloped and, consequently, untested in the record below.

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The Supreme Court requires federal courts to analyze facial challenges to state election laws by examining "the laws and their reasonably foreseeable effect on ***voters generally***." *Crawford*, 553 U.S. at 205-06 (Scalia, J., concurring) (emphasis in original). In other words, where voters experience an ordinary and widespread burden caused by a nondiscriminatory voting law, and the vast majority are capable of meeting it, the burden cannot be facially severe, regardless of how the requirement may affect any single voter or small subset of voters. *See id.* at 206 (citing *Clingman v. Beaver*, 544 U.S. 581, 590-91 (2005)).

Here, all registering voters must prove citizenship and no registering voter may self-verify that qualification, so the law is relevant to ***everyone's*** conduct. RSA 654:12, I ("[T]he supervisors of the checklist, or the town or city clerk, shall require the applicant to present proof of citizenship[.]"). Also, no challenged voter may self-certify qualifications where a moderator determines that a voter is more-likely-than-not ineligible to cast a ballot. These requirements of New Hampshire's election law system after QVA and CVA repeal apply to all.

The district court, however, failed to conduct its *Anderson-Burdick* analysis across voters generally, choosing instead to focus on a non-party, unidentified subset of the electorate whose purported burden could not be tested through the adversarial process below. This was error. Properly applying the Supreme Court's standard for facial challenges to state election laws confirms that the Plaintiffs

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failed to meet their heavy burden to show that New Hampshire's election law system violates the Federal Constitution following QVA and CVA repeal.

B. Plaintiffs' claims fail under the *Anderson-Burdick* framework because New Hampshire's election law system's documentary proof of citizenship requirement imposes a minimal burden on voters that is amply justified by the State's important and legitimate regulatory interests.

The Supreme Court's *Anderson-Burdick* framework governs this Court's review of state election laws, and this framework necessarily leads to the conclusion that New Hampshire's election law system, following repeal of QVAs and CVAs to prove the citizenship qualification, places only a minor and ordinary burden on the right to vote while advancing important and legitimate State interests in election integrity, voter confidence, administrative efficiency, and protecting the public fisc. New Hampshire's election law system post-QVA and CVA repeal survives scrutiny under the *Anderson-Burdick* framework.

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The *Anderson-Burdick* analysis has three steps. *See Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). First, a court weighs the character and magnitude of the asserted injury to voters' rights. *Id.* Second, a court evaluates the state's interests and justifications for the challenged voting regulation. *Id.* Third, "only after weighing all these factors[,]" a court must weigh the legitimacy and strength of the state's interests to determine whether the restrictions are constitutionally permissible. *Id.*; *Common Cause R.I. v. Gorbea*, 970 F.3d 11, 14 (1st Cir. 2020).

Where an election restriction is generally applicable and nondiscriminatory, weighing the character and magnitude of voters' burden is an electorate-wide analysis. *Crawford*, 553 U.S. at 205-06 (Scalia, J. concurring) ("[W]e considered the laws and their reasonably foreseeable effect on ***voters generally***.") (citing *Burdick*, 504 U.S. at 439) (emphasis in original). So, the burden-side of a court's analysis must not include the magnitude of burden experienced by an electoral subset, even if the subset experiences atypically greater difficulties than voters generally. *See id.* (contrasting *Burdick*'s holding and rationale with the *Burdick* dissenters').

The framework's applicable level of scrutiny takes one of two tracks. *Burdick*, 504 U.S. at 434. Election laws that impose only "reasonable, nondiscriminatory restrictions" are subject to rational basis scrutiny where "'the State's important regulatory interests are generally sufficient to justify' the restrictions." *Id.* (quoting *Anderson*, 460 U.S. at 788). "Ordinary and widespread burdens, such as those requiring 'nominal effort' of everyone, are not severe." *Crawford*, 553 U.S. at 205 (Scalia, J. concurring) (citing *Clingman*, 544 U.S. at 584). "Severe" restrictions are subject to heighten scrutiny where "the regulation must be 'narrowly drawn to advance a state interest of compelling importance.'" *Burdick*, 504 U.S. at 434 (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992)).

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New Hampshire's proof of citizenship requirement at the time of registration is a reasonable and nondiscriminatory condition of voting, as is the State's process for resolving challenges to a voter's qualifications. If these requirements impose any burden on voters, the burden is a nominal, ordinary incident of the voting process. Moreover, it is mitigated by strict procedural standards. The district court erred as a matter of law concluding otherwise.

This Court's *Anderson-Burdick* analysis "must start by assessing 'the character and magnitude of the asserted injury' to the plaintiff's constitutionally protected rights[.]" *Werme v. Merrill*, 84 F.3d 479, 483 (1st Cir. 1996) (quoting *Anderson*, 460 U.S. at 789). The character and magnitude of a challenged law's purported burdens must be examined in the context of a state's comprehensive election scheme. *See Burdick*, 504 U.S. at 441-42.

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"Ordinary and widespread burdens, such as those requiring nominal effort of everyone, are not severe." *Crawford*, 553 U.S. at 205 (Scalia, J., concurring). "Burdens … arising from life's vagaries … are neither so serious nor so frequent as to raise any question about the constitutionality" of an election law that affords protections from such vagaries. *See id.* at 197 (plurality). So, the Supreme Court has held that a photo-identification requirement is not a severe burden, even where "a somewhat heavier burden may be placed on a limited number of persons." *See id.* at 199. Other ordinary burdens of voting include traveling to a polling place,

producing identity, and waiting in line. *See Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 669 (2021); *Crawford*, 553 U.S. at 198.

Like photo ID in *Crawford*, New Hampshire's citizenship-verification requirement applies evenhandedly to all registering voters, it affects only a small subset of the voting-eligible population, and it imposes only a nominal burden on the electorate—voters must produce proof of their citizenship qualification to vote.

The undisputed evidence at trial bore this out. Regarding voter registration, Plaintiffs' expert Dr. Herron estimated that 98.33% of all voting-eligible New Hampshire residents possess birth certificates, passports, or naturalization papers in their current legal names (or possessed a name-verifying marriage license). Ex. 15, ¶ 176; Trial Tr. ECF 157, 15:22-25. Accordingly, Dr. Herron estimated that only 1.67% do not possess one of these documents. *See* Ex. 15, ¶ 176; Trail Tr. ECF 157, 15:22-25. And even that small percentage overstates the number of people who must provide proof of citizenship, even if DPOC were the exclusive permissible form of verification—which it is not. *See id.*; ECF 157, 15:22-25.

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New Hampshire has 1,099,485 voting-age residents, of whom 977,118 are currently active registered voters. *Id.* ¶ 171 (Herron Rep. citing Census Bureau); Ex. 16, ¶ 23. So, at most, only 122,367 unregistered voting-eligible residents could be required to prove citizenship. *See id.* Dr. Herron also estimated that 120,323 of the 122,367 potentially affected residents already possess documentary proof of

citizenship. *See id.*, ¶ 176; ECF 157, 15:22-25. The projection that just 2,000 voting-eligible residents ***may*** not currently possess DPOC shows that these individuals are atypical, and it says nothing about whether they could comply with the law before the next election. And like the character and magnitude of the *Crawford* voters' potential inconvenience of obtaining an ID from the DMV and then presenting photo-identification, these burdens across the electorate as a whole are, at most, *de minimis*. *See Crawford*, 553 U.S. at 198. The evidence is not legally sufficient to support the district court's conclusion that QVA-repeal transforms New Hampshire's election law system into one that places a "significant" burden on voters.

Repeal of CVAs to overcome qualification challenges also applies evenhandedly to all registering voters. RSA 659:27, I. However, the record below reveals that no voter has ever used a CVA to overcome a challenge; consequently, there is no evidence that the loss of CVAs actually burdens anyone. ECF 176 at 10 ("[T]here is no evidence that any voter ever used a CVA to overcome another person's challenge to his eligibility to vote."). Plaintiffs' expert Dr. Mayer testified that he is not aware of ***any*** challenged voter who relied on a CVA to cast a ballot. Trial Tr. ECF 150, 103:17-21. He concluded that voter challenges were uncommon. *Id.* 103:21-22. Former Election Law Unit Chief (now Deputy Secretary of State) Brendan O'Donnell testified that he too is unaware of any voter

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using a CVA to overcome a voter-challenge. Trial Tr. ECF 160, 101:3-24, 103:9-12. Indeed, he was unaware of ***any*** successful challenge to a voter's qualifications—much less a voter's CVA-use to overcome a challenge. *Id.* The district court acknowledged that "there is no record of anyone previously making a formal challenge to a voter's qualifications as permitted by New Hampshire law[.]" ECF 176 at 79. Since the court found no evidence of CVA use, the evidence is not legally sufficient to support the district court's legal conclusion that CVA-repeal is "at least somewhere in between the two poles of severe and nonsevere[.]" *Id.* at 81-82 (quoting *Fish v. Schwab*, 957 F.3d 1105, 1128 n.6 (10th Cir. 2020)) (internal quotations omitted).

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1. Registrants have many options to verify citizenship, so DPOC is not registrants' only recourse.

New Hampshire's statutory scheme is not constitutionally required to take "life's vagaries" into account by providing fail-safes to DPOC citizenship-verification. *See Crawford*, 553 U.S. at 208-09 (Scalia, J., concurring). Nevertheless, RSA 654:12 accommodates the atypical registrant who does not possess DPOC in at least five ways. First, evidence that a registrant was at any time registered to vote in New Hampshire, proves citizenship. RSA 654:12, I(a). Prior registration data is available in the SVRS to assist registrants prove citizenship. RSA 654:12, VI. If polling places have difficulty accessing the SVRS, local election officials have been instructed to contact either the Secretary

of State's HAVA Elections Help Desk or the Attorney General's Election Law Hotline, where state officials will run SVRS inquiries for them. Trial Tr. ECF 159, 13:5-9; Trial Tr. ECF 163, 86:19-25; *see also* RSA 654:12, II-a. As discussed above regarding Youth Movement's members and the Individual Plaintiffs, already registered voters will never have to present DPOC, so they will never need a QVA.

Second, election officials are obligated by state law to assist a registrant's citizenship verification through the Secretary's office, and, if the registrant cannot afford DPOC, the law provides a process to receive a voucher to obtain such documentation from a jurisdiction outside New Hampshire. RSA 654:12, II-a.

Third, election officials must assist registering voters through the New Hampshire Vital Records Information Network ("NHVRIN"). RSA 654:12, VI. With records of New Hampshire births, adoptions, marriages, civil unions, divorces, civil dissolutions, and name change orders, registering voters without DPOC have this resource from which to prove citizenship and resolve name discrepancies. Trial Tr. ECF 159, 12:7-8, 12:10-15. The NHVRIN is available through the SVRS, and the Secretary of State's HAVA Elections Help Desk and the Attorney General's Election Law Hotline stand ready to run queries if technology or security access limits local election officials. *Id.* 13:5-9; Trial Tr. ECF 163, 86:19-25.

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Fourth, election officials must assist registering voters through the New Hampshire Division of Motor Vehicles ("DMV") database. RSA 654:12, VI; Trial Tr. ECF 159, 11:21-22; Trial Tr. ECF 164, 60:4-9. As briefly explained above regarding A.M. and L.M., all citizens who apply for a Real ID-compliant New Hampshire identification must prove citizenship, so registrants with Real IDs need not re-prove citizenship to vote. Trial Tr. ECF 159, 11:22-12:3; Trial Tr. ECF 164, 60:18-61:1; *see* RSA 654:12, VI. As with SVRS and NHVRIN, the Secretary of State's HAVA Elections Help Desk and the Attorney General's Election Law Hotline stand ready to assist local election officials. Trial Tr. ECF 159, 13:5-9; Trial Tr. ECF 163, 86:19-25.

Fifth, a registrant may prove citizenship with any other reasonable documentation indicating that he or she is a citizen. RSA 654:12, I(a). This is a flexible standard intended to help meet each voter's unique circumstances. Trial Tr. ECF 159, 7:9-14. The Secretary of State's and Attorney General's offices have provided guidance to local election officials regarding what should suffice to establish citizenship under this provision. *Id.* 6:14-23. Specifically, local officials have accepted digital photos of birth certificates and expired passports to provide registrants with flexibility where they do not have readily accessible citizenship documents. *Id.* 7:13-18, 7:19.

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Whether described as fail-safes or accommodations, the foregoing options are available to all registrants, despite not being constitutionally required. *See Crawford*, 553 U.S. at 209 (Scalia, J., concurring).

2. Citizenship-verification upon registration requires a nominal effort of every new voter, so RSA 654:12's constitutionality must be scrutinized on its rational basis.

The district court concluded that QVA-repeal imposed a significant burden on voters, even considering HB 464's non-DPOC options for citizenship-verification. ECF 176 at 72. Accordingly, it applied heightened scrutiny to its analysis of the State's interests. *Id.* This was an error of law in at least three interrelated ways. First, the court incorrectly focused on projected, potential consequences of a registrant's failure to follow the law. Second, the court did not weigh the burdens across the entire electorate, instead weighing the estimated burdens of a small sub-subset of the electorate. Third, the trial court relied upon that small sub-subset to declare QVA-repeal ***facially*** invalid.

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The degree to which a state election law procedure burdens voters is measured by the severity of the restriction on the right to vote, not the severity of the consequence if a voter does not comply. *See Gardner*, 638 F.3d at 14 (noting that whether a voting restriction is subject to strict scrutiny depends on the applicability and reasonableness of the restriction); *Ariz. Democratic Party v. Hobbs*, 18 F.4th 1179, 1188 (9th Cir. 2021) (adopting the reasoning that if

measured by consequence, all voting restrictions would be subject to strict scrutiny, which they are not). For example, where voters have access to free identification, voters are merely inconvenienced, even if they must drive to different state offices to conform with the law's requirements. *See Crawford*, 553 U.S. at 198 (plurality).

The Supreme Court has consistently held that where a law is broadly applicable to all voters and does not impose "excessively burdensome requirements on any class of voters[,]" "it imposes only a limited burden on voters' rights." *Crawford*, 553 U.S. at 202-03 (plurality) (quoting *Storer v. Brown*, 415 U.S. 724, 738 (1974); *Burdick*, 504 U.S. at 439) (quotations omitted). The district court correctly held that, on its face, New Hampshire's election law system no longer allows any voter to self-verify citizenship. *See* ECF No. 176 at 67 (noting that QVA-repeal "impacts voters as a whole"). Verifying citizenship, when viewed across the whole of the electorate, reflects the ordinary and widespread inconvenience of locating and producing documents, or asking an election official to search online databases. *See Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 669 (2021) (identifying travel, producing ID, waiting in line as expected inconveniences). As a matter of law, QVA-repeal results in a state election procedure that imposes a nominal and expected burden, consistent with a state's

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legitimate interest in verifying voter registrant qualifications, so the court's inquiry should have ended there.

Instead, the court found that a "significant portion" of QVA-affiants used QVAs to establish citizenship—a subset of an already small subset of the electorate. ECF 176 at 62. And it concluded that this sub-subset did so because it "did not possess or could not easily retrieve DPOC." ECF 176 at 62. A court, however, cannot select a sub-subset of hypothetical voters, who ***may*** have greater difficulty complying with an ordinary requirement (we do not know because their burden was never tested in this case through the ordinary adversarial process), to turn an otherwise nominal burden over the whole electorate into a severe one over a sub-subset of potential voter registrants. *See Crawford*, 553 U.S. at 205 (Scalia, J., concurring). Individualized or idiosyncratic "light and heavy burdens are no more than the different ***impacts*** of the single burden that the law uniformly imposes on all voters." *Id.* (emphasis in original). The Supreme Court has routinely "refute[d] the view that individual impacts are relevant to determining the severity of the burden it imposes." *Id.* at 205-06 (collecting cases). The *Burdick* Court prohibited courts from weighing the burdens of voter-subsets against state interests where generally applicable election laws are ***facially*** challenged. *See Crawford*, 553 U.S. at 206 (Scalia, J., concurring). Indeed, weighing subsets' unique burdens "was essentially the approach of the *Burdick* dissenters, who would

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have applied strict scrutiny to the laws because of their effect on 'some voters.'" *See id.* (quoting *Burdick*, 504 U.S. at 446 (Kennedy, J., dissenting)).

Moreover, New Hampshire's election law system following QVA repeal cannot be invalid on its face "based on the mere possibility" that a certain sub-subset of voters may face an indeterminable and untested level of burden. *See Wash. State Grange*, 552 U.S. at 455. Even if it were permissible in the *Anderson-Burdick* framework to weigh the burdens of such a voter-subset, the district court did not explain how it could be that facial invalidation of QVA-repeal would be the proper remedy. *See Crawford*, 553 at 203 ("Finally we note that petitioners have not demonstrated that the proper remedy—even assuming an unjustified burden on some voters—would be to invalidate the entire statute.").

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Accordingly, the district court should have concluded that QVA-repeal is subject to rational basis review. The right to vote is fundamental, but state election laws are rarely subject to strict scrutiny. *See Burdick*, 504 U.S. at 433. Burdens are severe only where they significantly impair the right to vote without affording alternative means of ballot access. *See Crawford*, 553 U.S. at 185 (finding burdens are less severe where mitigated by the election scheme); *Burdick*, 504 U.S. at 436 (finding burdens are not severe where they can be mitigated through voter-planning). New Hampshire's election law system post-QVA repeal imposes only a minimal burden on the right to vote. RSA 654:12 mitigates that minimal burden

by establishing the State's obligation to verify registrants' citizenship without the registrant producing DPOC, through the SVRS, NHVRIN, DMV, and other online databases, and registrants may offer any other reasonable documentation of citizenship.

3. CVA-repeal does not impose burdens on voters because no voter has ever used a CVA to overcome a challenge.

The foregoing analysis of the constitutionality of citizenship verification applies with equal force to New Hampshire's election law system post-CVA repeal, except in one critical respect: CVA-repeal does not impose even a nominal burden—it poses no burden at all. The district court was clear about the sufficiency of Plaintiff Open Democracy's evidence:

> Although voters have used CVAs regularly to overcome New Hampshire's requirement that voters present valid photo identification at the polls, ***there is no evidence that any voter ever used a CVA to overcome another person's challenge*** to his eligibility to vote. In fact, there is no evidence that any voter ever formally challenged another voter's eligibility pursuant to RSA 659:27.

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ECF 176 at 10 (emphasis added). Lacking a legally sufficient basis to proceed, the court identified one "mass challenge" which the Attorney General's office rejected out of hand. *Id.* (citing Trial Tr. ECF 161 at 20:5-8). No voter used a CVA to overcome it because mass challenges are unlawful. *See, e.g.*, RSA 659:27-a, I.

Undeterred, the district court theorized that:

> [a]lthough there is no record of anyone previously making a formal challenge to a voter's qualifications as permitted by New Hampshire

> law, the previous availability of the CVA to overcome any such challenge renders that fact of limited importance.

Id. at 79. The court erred by declaring that the lack of evidence was of "limited importance." *See id.* at 79. The court listed numerous ways a bad actor ***could*** "potentially" abuse the system, without a scintilla of evidence that anyone ever has. *See id.* As a matter of law, the district court erroneously held that voters are burdened by CVA-repeal because:

> HB 1569 has increased ***the practical effect*** of a challenge and, ***potentially***, the ***incentive*** to initiate one. Particularly in today's political environment and under the statutory scheme as it now exists, eligibility challenges are ***likely*** to become more common.

Id. (emphasis added). The court drew this speculative conclusion without a single citation to supporting authority. *Id.* The best it could make out was an "absence of functional standards" attributed to *Saucedo v. Gardner*, 335 F. Supp. 3d 202, 218 (D.N.H. 2018), but *Saucedo* is inapposite. ECF 176 at 80. The district court in *Saucedo* was concerned with a judgment standard without review or oversight. 335 F. Supp. 3d at 218. It was not speculating about potential third-party bad actors who would intentionally violate the law, and New Hampshire's voter challenge system affords immediate judicial review to aggrieved voters. *Id.*; RSA 654:12, V. But even if this Court were to accept the district court's "practical effect" and "potential challenges" findings as sufficiently grounded in the evidence, forecasts such as these are legally insufficient to sustain a facial

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constitutional challenge. A court cannot "speculate about 'hypothetical' or 'imaginary' cases." *Wash. State Grange*, 552 U.S. at 449-50.

The district court concluded that CVA-repeal imposed a considerable burden on voters, even considering that no one ever used a CVA to overcome a voter challenge. ECF 176 at 81. Despite this lack of record evidence, the district court applied heightened scrutiny to its analysis of the State's interests. *Id.* This analysis erred in at least three ways. First, the court could not identify any individual burdened by CVA-repeal, much less burdens across the entire electorate. Second, the court estimated theoretical burdens of a subset of voters who hypothetically could be challenged. And third, the court relied upon hypotheticals to declare CVA-repeal facially invalid.

For these reasons, CVA-repeal is subject to rational-basis review. The *Anderson-Burdick* framework analyzes the ***specific*** facts in the context of a challenged election system. *See Ariz. Green Party v. Reagan*, 838 F.3d 983, 990 (9th Cir. 2016). So, "[a]nalogy and rhetoric are no substitute for evidence[.]" *Id.* Since CVAs never enabled ballot access to a successfully challenged voter, their repeal cannot possibly burden ballot access. *Id.* at 889-90.

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C. New Hampshire has important and compelling interests justifying citizenship verification upon registration and eligibility verification prior to voting.

After weighing the character and magnitude of a challenged regulation's burden on the electorate, *Anderson-Burdick*'s second step requires a court to evaluate the state's interests and justifications for the regulation. *Anderson*, 460 U.S. at 789. New Hampshire's interests and justifications for QVA and CVA-repeal should be scrutinized for their rational basis. Regardless, the State's interests are sufficiently important and compelling that New Hampshire's verification of citizenship and eligibility requirements would survive *Anderson-Burdick* under any level of scrutiny.

The district court agreed with the Defendants—the State's interest in ensuring election integrity, promoting voter confidence, and protecting the public fisc, are legitimate state interests. *See* ECF 176 at 72. The district court's incorrect conclusion that QVA and CVA-repeal imposed significant burdens, however, caused it to discount the importance of the State's interests and conclude that the State's interests do not justify the burdens of the affidavit-repeals *See id.* at 73 and 83.

There can be no dispute that New Hampshire has an important interest in ensuring that only legitimate votes are counted. *See, e.g.*, *Crawford*, 553 U.S. at 196 (plurality) ("There is no question about the legitimacy or importance of the

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State's interest in counting only the votes of eligible voters."). New Hampshire's election laws are appropriate prophylactics to ensure an orderly democratic process that promotes public confidence in election results. *See Perez-Guzman*, 346 F.3d at 238 ("Substantial state regulation is a prophylactic that keeps the democratic process from disintegrating into chaos."). All phases of the electoral process need this prophylactic support and protection. *Id.* ("Consequently, there is a strong state interest in regulating all phases of the electoral process, including ballot access.") (citing *Storer*, 415 U.S. at 730; *Libertarian Party of Me.*, 992 F.2d at 370). New Hampshire's important and compelling regulatory interests in election integrity, voter confidence, and protecting the public fisc, are sufficient to justify its reasonable, nondiscriminatory citizenship-verification requirement. *See Anderson*, 460 U.S. at 789. The court held that these interests were "only minimally furthered" by QVA-repeal and that they were "not advanced at all" by CVA-repeal. ECF 176 at 82. Neither conclusion is supported by the evidence or as a matter of law.

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1. New Hampshire's interest in ensuring election integrity justifies its verification requirements.

New Hampshire "indisputably has a compelling interest in preserving the integrity of its election process." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam) (internal quotation marks omitted). Indeed, a "state is entitled to take a 'belt-and-suspenders' approach and put in place multiple mechanisms for ensuring

the integrity of its electoral processes." *Perez-Guzman*, 346 F.3d at 246. So, it has a "strong and entirely legitimate" interest in combatting fraud. *Brnovich*, 594 U.S. at 672. Additionally, New Hampshire has interests in preventing the risk and suspicion of fraud, misadministration, voter confusion, voter registration inaccuracies, and other threats to the electoral process. *See, e.g.*, *Doe v. Reed*, 561 U.S. 186, 233 (2010); *Crawford*, 553 U.S. at 191; *VoteAmerica v. Raffensperger*, 696 F. Supp. 3d 1217, 1233 (N.D. Ga. 2023); *Bellitto v. Snipes*, 935 F.3d 1192, 1198 (11th Cir. 2019).

Even were the Court to apply strict scrutiny to justify the State's verification requirements, the existence of nominal or prevalent voter fraud is not constitutionally required. *See Brnovich*, 594 U.S. at 686 ("And it should go without saying that a State may take action to prevent election fraud without waiting for it to occur and be detected within its own borders."). In fact, the State need not prove that any specific threat to election integrity existed before passing a law to proactively protect the democratic process. *See Munro v. Socialist Workers Party*, 479 U.S. 189, 195-96 (1986) (rejecting argument that the state must prove "actual voter confusion" because such proof would require a state "to sustain some level of damage before the legislature could take corrective action[.]").

Nevertheless, Defendants offered uncontroverted evidence of complaints and investigations regarding wrongful voting, fraud, and QVA-system errors and

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abuse. Former ELU Chief O'Donnell testified that between 2016 and 2025, the Attorney General's office investigated 202 matters alleging various types of wrongful voting, nine of which involved suspected noncitizens. Trial Tr. ECF 159, 61:20-62:2, 62:7-15. The ELU concluded that there were 49 instances of wrongful voting during that time, and seven of the suspected noncitizens were, in fact, noncitizens who registered to vote a total of nine times. Trial Tr. ECF 160, 41:5-10, 73:15-19, 90:13-91:4. It found that those seven noncitizens voted in 23 total elections, and at least two erroneously or fraudulently executed QVAs. *Id.* 73:15-19, 90:22-91:4. There is one pending prosecution of an alleged noncitizen voting not included in the foregoing tallies: *State v. Naseef Bryan*. *Id.* 66:6-11, 23. The defendant in that case is facing three felony complaints for noncitizen voting in the November 2023 Manchester city election, the January 2024 presidential primary election, and the November 2024 state general election. *Id.* 66:17-21.

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2. New Hampshire's interest in ensuring voter confidence justifies its verification requirements.

Election integrity is a fundamental state interest not only because it secures fair and honest election outcomes—it sustains public confidence in the electoral process. *Purcell*, 549 U.S. at 4. Public confidence, in turn, reinforces electoral integrity by encouraging voter participation in the democracy process. *See Crawford*, 553 U.S. at 197. New Hampshire has an important interest in "orderly administration and accurate recordkeeping … [to identify] all voters participating

in the election process." *Id.* at 196. The relationship between election integrity and voter confidence is "practically self-evidently true[.]" *Feldman v. Arizona Sec'y of State's Off.*, 843 F.3d 366, 391 (9th Cir. 2016) (noting that laws designed to prevent voter fraud also naturally instill public confidence) (citations omitted).

At trial, Secretary of State Scanlan testified that voter confidence reflects the average voter's faith that elections are conducted in a fair and impartial manner; that the results that are delivered at the end of the night accurately reflect the outcome of the election; and that the participants in that election process are qualified to participate. Trial Tr. ECF 165, 7:19-8:1. The Secretary formed the Special Committee on Voter Confidence to investigate what could be done to make voters more confident in New Hampshire's elections. *Id.* 5:18-21, 6:1-5. The Committee held about a dozen hearings across the state, hearing about 47 hours of testimony from 400 individuals, including the general public. *Id.* 5:18-7:18, 8:22-9:20; Trial Tr. ECF 143, 62:18-21. Among other things, the Committee found that

> [a]s a result of misinformation and other factors regarding the safety and accuracy of our electoral process, there has been an erosion of confidence in elections here and nationally recently. Polls show the percentage of those expressing confidence, while still a clear majority, is lower than in the past.

Defs. Ex. R at SOS-FT-1179229. The Secretary testified that the Committee made recommendations to increase voter confidence, primarily through education and transparency. Trial Tr. ECF 165, 11:9-22. For example, the Committee noted that

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the ELU's investigations of "complaints about election law infractions and needs to be transparent." Defs. Ex. R at SOS-FT-1179228. It recommended that "[t]raining should emphasize strict adherence to requirements for proper filing of forms, transparency, access, and other voter confidence-building requirements." *Id.* at SOS-FT-1179230.

3. New Hampshire's interest in ensuring effective and efficient election administration justifies its verification requirements.

New Hampshire has important interests in efficient election administration and reducing its resource burdens. *See Ariz. Democratic Party*, 18 F.4th at 1181; *Eakin v. Adams Cty. Bd. of Elections*, 149 F.4th 291, 318 (3d Cir. 2025). The interest in efficient election administration includes protecting the public fisc from unnecessary or ineffective expenditures. *See Sam Party of N.Y. v. Kosinski*, 987 F.3d 267, 271 (2d Cir. 2021). Where a state has limited resources, wasteful activities divert resources from effective election integrity efforts and undermine public confidence. *See Mays*, 951 F.3d at 787.

The State expended considerable resources investigating QVA and CVA-use. Elections Director Patricia Piecuch testified that the Secretary's office ran affidavit-usage reports from the SVRS and contacted clerks to ensure that clerks were retaining original affidavits. Trial Tr. ECF 164, 37:11-13. The Secretary's office also confirmed SVRS-accuracy with the clerks (*e.g.*, six affidavits in the

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SVRS and six physical affidavits retained) and that the affidavits were associated with the correct voters (*e.g.*, six affidavits were used by the same six voters identified in the SVRS). *Id.* 37:11-19. Director Piecuch also testified that the Secretary's office coordinated with local officials to correct key-in errors, which did occur. *Id.* 37:20-24.

Then the process required the Secretary's office to send letters to voters who used affidavits. *Id.* 38:2-7. The letter included a postcard asking the affiant to acknowledge that the voter actually voted that day. *Id.* Director Piecuch and Deputy O'Donnell explained that if a voter did not confirm his or her identity by postcard, telephone, or e-mail, the Secretary conducted further independent research, including follow-up communications with local election officials. *Id.* 38:8-12; Trial Tr. ECF 160, 111:20-112:1. Deputy O'Donnell also testified that New Hampshire law did not require affiants to verify their voter qualifications after the fact. Trial Tr. ECF 160, 116:21-117:6. So, the Secretary's office referred unverified affiants to the Attorney General. Defs. Exs. T–X. The Attorney General then took additional steps to verify voters. *Id.* 112:1-4.

Deputy O'Donnell testified that the Attorney General's office does not have the resources to conduct QVA and CVA verifications simultaneously with other statutory duties. *Id.* 113:13-19, 114:3-10. Since 2017, the ELU spent about 1,100 hours verifying QVA, CVA, and domicile affidavits combined. *Id.* ECF 162,

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54:14-21. Notably, at the time of trial in this case, the Attorney General's office still had not yet received referrals from the Secretary for QVAs or CVAs executed in elections between 2022 and 2024. *Id.* ECF 160, 113:20-25. This evidence was unrefuted and demonstrable of the State's interests in finding better ways to ensure election integrity, increase voter confidence, and protect the public fisc.

D. The legitimacy and strength of the state's interests outweigh the burdens of citizenship verification upon registration and eligibility verification upon casting a ballot.

After evaluating the state's interests and justifications for a voting regulation, *Anderson-Burdick*'s third step requires a court to weigh the legitimacy and strength of the state's interests against the burden imposed on voters to determine whether state election law is constitutionally permissible. *Baines v. Dunlap*, 466 F. Supp. 3d 273, 280 (D. Me. 2020). The district court erred in concluding that "elimination of the QVA is significant and greatly outweighs the state's interests in this case[.]" ECF 176 at 78. It similarly erred in concluding that "elimination of the CVA is an unjustifiable burden on the right to vote[.]" *Id.* at 84.

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Notably, these conclusions have the wrong legal focus. The Supreme Court's *Anderson-Burdick* analysis requires the district court to test the burden New Hampshire's current election law system places on voters by requiring them to prove their citizenship without certain government-supplied self-verification

affidavits. The Supreme Court's precedent does not hold or otherwise permit a court to evaluate whether a state's repeal or amendment of a portion of its election law impermissibly burdens the right to vote by looking at what previously existed and comparing it to the law in effect.

Reviewed properly, New Hampshire's requirement that voters present DPOC or ask election officials to verify their qualifications through state and federal online resources is a measured constitutional exercise of the State's duty to protect the franchise. It imposes a minimal burden on voters. It also serves the State's important regulatory interests by improving election integrity, bolstering public confidence in election processes, checking voter qualifications, and enhancing administrative efficiency. The district court did not address unrefuted arguments and undisputed facts that substantially tilt *Anderson-Burdick* toward the State's interests. For example, whether cast accidentally or fraudulently, wrongful voting distorts elections. ECF 160 at 125:18-24, 93:5-12. In New Hampshire, unlawful ballots cannot be excised or discounted from the elections that they distort. *Id.* The State must prevent wrongful voting because single-digit vote-differentials have decided New Hampshire's state elections; thus, even one unlawful ballot can directly impact the outcome of a race. *Id.* 121:5-18. These interests are manifest, cannot be reasonably questioned, and suffice to establish the constitutionality of RSA 654:12 and RSA 659:27.

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New Hampshire's election law system after QVA and CVA repeal therefore survives federal constitutional scrutiny under the *Anderson-Burdick* framework.

III. Plaintiffs' due-process claim is subject to, and fails under, the *Anderson-Burdick* framework, and also fails under a traditional due process analysis.

Other circuits have recognized that *Anderson-Burdick* applies to all Fourteenth Amendment challenges to election laws, regardless of the theory. *See, e.g.*, *Ariz. Democratic Party v. Hobbs*, 18 F.4th 1179, 1195 (9th Cir. 2021); *Richardson v. Hughs*, 978 F.3d 220, 234 (5th Cir. 2020); *Tully v. Okeson*, 977 F.3d 608, 616 n.6 (7th Cir. 2020). This Court should do the same and should conclude that the Plaintiff's procedural due-process claim fails for the reasons previously stated.

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That claim still fails, however, even under the traditional due-process framework set out in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under *Mathews*, courts weigh three factors:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

424 U.S. at 335.

The Defendants do not dispute that eligible voters have a significant interest in their ability to cast ballots. But the Plaintiff never established that there was any risk that interest would be erroneously deprived under HB 1569. In concluding otherwise, the district court accepted the Plaintiff's contention that "elimination of the CVA creates a risk that eligible voters will be denied the right to vote because of the challenged-voter process." ECF 176 at 85. Notably, however, the district court found both that there was "no evidence that any voter ever used a CVA to overcome another person's challenge to his eligibility to vote" and that there was "no evidence that any voter ever formally challenged another voter's eligibility pursuant to RSA 659:27." ECF 176 at 10. The district court claimed that these facts were of "limited importance" because, in its view, HB 1569 "increased the practical effect of a challenge and, potentially, the incentive to initiate one," which the district court felt were "likely to become more common" in "today's political environment[.]" ECF 176 at 79. This is the type of "sheer speculation" that is insufficient to sustain a facial challenge. *Wash. State Grange*, 552 U.S. at 454–56. For this reason alone, the Plaintiff's due-process claim fails even under the *Mathews* framework.

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The claim also fails because New Hampshire law contains significant procedural safeguards for any voter facing a challenge at the polls. Any such challenge must be made through an affidavit, signed under oath, based on

"personal knowledge or other basis of probable cause that the challenged voter is ineligible to vote." RSA 659:27-a, I, II(a). The affidavit must conform to specific statutory requirements and must identify a specific basis for the challenge consistent with a list set forth in the statute. *Id.* "Before ruling on the challenge, the moderator *shall* give the challenged voter an opportunity to be heard." RSA 659:27-a, II(b) (emphasis added). And "[a] person aggrieved by the moderator's decision on a voter challenge may obtain ***immediate*** review of the decision in the superior court," *id.* (emphasis added), "which shall hear the appeal forthwith and shall make every reasonable effort to decide the matter as soon as possible and before the close of the polls on election day," RSA 654:12, V. There was testimony at trial that New Hampshire's courts provide for an election-day docket to hear such appeals. ECF 160, 104:18–105:4.

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In other words, there are specific procedural requirements that must be satisfied to bring a voter challenge under state law. Before any such challenge can be sustained, a challenged voter must be given notice and an opportunity to be heard before the moderator, who is governed by a statutory standard. If the moderator does sustain a challenge, the challenged voter has a right to seek immediate judicial review of that decision through a special docket set up for that purpose. This process, on its face, mitigates any risk that an eligible voter's ability to cast a ballot will be erroneously deprived. After all, federal courts are "obliged

to presume that state courts are fully capable of safeguarding federal constitutional rights." *Coggeshall v. Mass. Bd. of Registration of Psychologists*, 604 F.3d 658, 665 (1st Cir. 2010) (citation and quotation marks omitted). The second *Mathews* factor therefore weighs heavily in the Defendants' favor.

New Hampshire also has a substantial interest in preventing the risk and suspicion of voter fraud, election misadministration, voter confusion, mistaken voting, and other threats to election integrity. *See generally Crawford*, 553 U.S. at 191. And it also has an interest in efficiency and reducing administrative burdens. *See generally Sam Party of N.Y.*, 987 F.3d at 271. New Hampshire law helps ensure that only eligible voters can cast ballots while simultaneously protecting their ability to do so. Ex post investigations cannot correct improperly cast ballots. And, as discussed, New Hampshire law also reduces the inefficiencies and costs associated with those post-election investigations. *See* ECF 164, 39:3-40:12; ECF 160, 114:1-10. The third *Mathews* factor also weighs in the Defendants' favor.

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CONCLUSION

For the reasons stated above, Defendant-Appellants respectfully request that the Court vacate the district court's declaratory and equitable rulings and award judgment to Defendant-Appellants.

Respectfully submitted,

APPELLANTS DAVID M. SCANLAN, in his official capacity as New Hampshire Secretary of State and JOHN M. FORMELLA, in his official capacity as New Hampshire Attorney General

By their attorney,

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: November 6, 2026

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CERTIFICATE OF COMPLIANCE

On October 21, 2026, the Court granted Appellants' assented-to motion to enlarge their opening brief's word limit, enlarging the limit to 21,000 words. I hereby certify that the foregoing Appellants' Opening Brief complies with the word limit established by Federal Rule of Appellate Procedure 32(a)(7)(D) and enlarged by the Court, because the motion contains 18,512 words. Appellants' Brief complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 32(a)(5) and 32(a)(6) because it has been prepared using Microsoft Word for Microsoft 365 MSO (Version 2605 Build 16.0.20026.20166) 64-bit in 14-point Times New Roman typeface.

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/s/ Michael P. DeGrandis
Michael P. DeGrandis

CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2026, I electronically filed the foregoing Appellants' Brief with the Clerk of the Court for the United States Court of Appeals for the First Circuit using the appellate CM/ECF system. Participants in the case are represented by registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Michael P. DeGrandis
Michael P. DeGrandis

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No. 26-1740

ADDENDUM TO APPELLANTS' OPENING BRIEF

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ECF Document 176 - Order 83

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

New Hampshire Youth Movement

v.

David M. Scanlan, in his official capacity
as New Hampshire Secretary of State

Case No. 24-cv-291-SE
Opinion No. 2026 DNH 062 P

Coalition for Open Democracy et al.

v.

David Scanlan, in his official capacity
as New Hampshire Secretary of State et al.

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O R D E R

Though this case questions the constitutionality of two facets of New Hampshire's voting scheme as it was redefined by 2024 New Hampshire House Bill 1569 (HB 1569), it is important to understand what it does not question. The court is not deciding in this case whether it is constitutional for New Hampshire to require voters to prove their citizenship in order to register to vote. For many years, New Hampshire voters have been required to prove their citizenship. After this order goes into effect, New Hampshire voters will still be required to prove their citizenship. Instead, this case questions, in part, whether it is constitutional to remove one of the methods previously available for proving citizenship—an affidavit swearing to the voter's citizenship under penalties of voter fraud. It may be tempting for some to describe the Qualified Voter Affidavit as an exception to the proof-of-citizenship requirement, but it is not. A sworn affidavit capable of exposing an affiant to criminal prosecution is a method of proving

citizenship and not an exception to that requirement. Moreover, the evidence shows that it is the only method of proof available to a significant number of New Hampshire voters. It is not the court's role to decide matters of voting policy, but rather the ultimate issue the law places before the court on this claim is whether the state's precise interests in eliminating the Qualified Voter Affidavit reasonably justify the weight of the burden that decision imposes on voters' rights.

Prior to November 11, 2024, the effective date of HB 1569, it was more difficult to register to vote or to cast a ballot in advance of election day in New Hampshire than it was in most states. But New Hampshire offset those restrictions, to an extent, by offering election day registration, which allowed eligible New Hampshire voters to both register and vote on election day.

When HB 1569 took effect, it left in place New Hampshire's general voting scheme, including its restrictions, but it also made two significant changes that made it even more difficult for eligible voters in New Hampshire to register and cast a ballot. First, it removed the Qualified Voter Affidavit. Second, it eliminated a second affidavit that had acted as a procedural safeguard. The Challenged Voter Affidavit had also allowed voters to attest to their qualifications to vote under the penalties of voter fraud, but in a different circumstance—if their qualifications to vote were "successfully"[1] challenged by other people.

The New Hampshire Secretary of State, David Scanlan, and the office of the New Hampshire Attorney General, John Formella, concede that these changes will disenfranchise certain eligible voters. Nonetheless, lawmakers who supported HB 1569 offered as justification what has become a familiar refrain: the restrictions were necessary to combat voter fraud and

[1] A successful challenge means that a local supervisor of the checklist or a moderator has deemed the challenge "more likely than not . . . . well grounded."

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ensure election integrity.[2] Those claims were curious, especially because the lawmaker who sponsored the bill and the governor who signed it into law both said that they did not believe voter fraud was an issue in the state. Still, and despite local election officials raising concerns about the anticipated effect of the bill, then-New Hampshire Governor Chris Sununu signed HB 1569 into law. Almost immediately, multiple people and organizations filed cases challenging the law.

In this consolidated action, several plaintiffs bring suit under 42 U.S.C. § 1983 against the New Hampshire Secretary of State and the New Hampshire Attorney General seeking a declaratory judgment that the provisions of HB 1569 eliminating the Qualified Voter Affidavit to prove citizenship and the Challenged Voter Affidavit to overcome a successful challenge violate the United States Constitution.[3] The plaintiffs challenging HB 1569's elimination of the Qualified Voter Affidavit to prove citizenship include four voting rights and advocacy organizations, Coalition for Open Democracy (Open Democracy), League of Women Voters of New Hampshire (League of Women Voters-NH), the Forward Foundation, and New Hampshire Youth Movement (Youth Movement) (together, the Organizational Plaintiffs), and three individuals, Miles Borne, Alexander Muirhead, and Lila Muirhead (together, the Individual

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[2] As discussed further below, the defendants offered at trial additional state interests that they claim justify eliminating the Qualified Voter Affidavit and the Challenged Voter Affidavit.

[3] Voters could previously use the Qualified Voter Affidavit for purposes other than to prove citizenship, such as to prove their age or domicile. Similarly, voters could previously use the Challenged Voter Affidavit for purposes other than to overcome a successful challenge, such as to prove identity. Unless otherwise specified, any time the court discusses the elimination of the Qualified Voter Affidavit or the Challenged Voter Affidavit herein, it means only the elimination of the Qualified Voter Affidavit to prove citizenship and the elimination of the Challenged Voter Affidavit to overcome a successful challenge.

Plaintiffs).[4] Open Democracy is the only plaintiff remaining in this case who is challenging HB 1569's elimination of the Challenged Voter Affidavit. The plaintiffs also seek injunctive relief barring state officials from implementing the challenged provisions, as well as fees and costs.

After a nine-day bench trial, the court issues its Findings of Fact and Conclusions of Law in accordance with Federal Rule of Civil Procedure 52(a). As explained below, HB 1569's eliminations of the Qualified Voter Affidavit and the Challenged Voter Affidavit significantly burden eligible New Hampshire voters' rights to vote. Eliminating those affidavits does little, if anything, to further the state's interests. Therefore, eliminating the affidavits constitutes an unjustifiable burden on the right to vote in violation of the First and Fourteenth Amendments. Eliminating the Challenged Voter Affidavit further violates voters' rights to procedural due process. Therefore, the provisions of HB 1569 eliminating those affidavits are unconstitutional, and the defendants are permanently enjoined from implementing or enforcing those provisions.

The court also addresses below the plaintiffs' request for sanctions as the result of the defendants' discovery violations.

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Findings of Fact

The plaintiffs offered three experts at trial, each of whom authored at least one expert report and testified. The experts were 1) Dr. Kenneth Mayer, who opined on HB 1569's effects on New Hampshire elections, and particularly the effects of the elimination of the citizenship

[4] Youth Movement instituted one of the actions. See New Hampshire Youth Movement v. Scanlan, No. 24-CV-291-SE (D.N.H. 2024). The remaining plaintiffs (Open Democracy Plaintiffs) filed the other action. See Coal. for Open Democracy et al. v. Scanlan et al., No. 24-CV-312-SE (D.N.H. 2024). After ruling on the defendants' motions to dismiss in each case, the court consolidated what remained of the cases.

Qualified Voter Affidavit and the elimination of the Challenged Voter Affidavit to overcome a voter challenge; 2) Dr. Lorraine Minnite, who analyzed the incidence of voter fraud generally and in New Hampshire, the incidence of noncitizen voter fraud in New Hampshire, and whether HB 1569's removal of the affidavits will have a meaningful impact on preventing voter fraud in New Hampshire; and 3) Dr. Michael Herron, who analyzed the burdens that HB 1569's elimination of the Qualified Voter Affidavit imposes on eligible New Hampshire voters.

The defendants moved to exclude each expert's opinion prior to trial. Doc. nos. 92, 93, 94. The court denied each motion without prejudice and the defendants did not renew their motions during or after trial. The court finds the testimony of the plaintiffs' three experts, each of whom has been found qualified as an expert and offered expert testimony in at least 10 election-related cases, highly credible and credits it where appropriate and noted herein.

The court also notes that the defendants disclosed Secretary Scanlan and the Attorney General's office's Chief Investigator, Richard Tracy, as experts in this case. See doc. no. 99-4. However, the defendants ultimately offered at trial only testimony from Secretary Scanlan and Investigator Tracy in their personal capacities. The defendants offered no expert opinion or testimony in this case.

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I. New Hampshire's Voting Regime Before HB 1569

A. Registering to Vote

Prior to November 11, 2024, the effective date of HB 1569, New Hampshire already had one of the strictest voting regimes in the country and, consequently, one of the highest "costs of voting" in the country. Doc. no. 155, Trial Tr. at 96:22-100:20 (explaining the participation and information costs ("costs of voting") that prospective voters balance against instrumental and

expressive benefits ("benefits of voting") when deciding whether to vote); Ex. 15 at 32-33 (discussing 2022-2024 studies finding New Hampshire voting schemes imposed the first, second, fourth, and sixth highest cost of voting in the nation). It was one of four states that did not offer early, in-person voting. Except in special circumstances, it did not allow voters to register by mail or online, the latter of which is available in 42 states and Washington D.C. New Hampshire also did not permit provisional balloting, automatic voter registration, third-party registration or third-party voter registration drives,[5] or voter registration at offices of the state's Division of Motor Vehicles.

Unlike many states, however, New Hampshire did allow prospective voters to register to vote on election day. And voters often took advantage of that opportunity—347,199 New Hampshire voters registered to vote on election day in general elections and 175,856 voters registered on election day in primary elections between 2016 and 2024. Looking more recently, more than two-thirds of registrants between April and November 2024 registered on election day.

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It is broadly recognized that offering election day registration decreases the cost of voting. Relying on that benefit, New Hampshire is one of only six states exempt from the requirements of the National Voter Registration Act of 1993. See 52 U.S.C. § 20503(b)(1)-(2) (exempting states that, continuously since August 1, 1994, with respect to an election for Federal office, impose no voter registration requirement for any voter and those that allow election day registration). If it were subject to the NVRA, New Hampshire would be required to make it

[5] As discussed further below, certain Organizational Plaintiffs hold or plan to hold high school voter registration drives. These drives are possible only when the organizations bring local election officials to effectuate student registrations.

easier for people to register to vote and maintain their registrations in a number of ways, including by offering the opportunity to: register to vote at the DMV when people apply for or renew a driver's license, id. § 20503(a)(1); register to vote at all offices that provide public assistance or provide state-funded services to people with disabilities, id. § 20506(a)(2)-(3); and register to vote by mail, id. § 20503(a)(2). New Hampshire would also be required to permit provisional ballots from voters who declare that they are registered and eligible to vote, even if their names do not appear on the voting lists or an election official asserts that they are ineligible to vote. See 52 U.S.C. § 21082(a) (The Help America Vote Act requiring states to allow provisional ballots, except states exempt from the NVRA under 52 U.S.C. § 20503(b)).

In addition, New Hampshire removed voters that it deemed inactive from its voter rolls every 10 years, in each year ending in 1. An inactive voter was a registrant who had not voted in the previous four years and did not respond to a written notice within 30 days. New Hampshire removed more than 195,000 voters from its voter rolls in 2021.

A person is qualified to vote in New Hampshire if he is a resident of the state, a United States citizen, 18 years or older on the date of the election, and domiciled in the jurisdiction in which he intends to cast a ballot. Prior to HB 1569, N.H. Rev. Stat. Ann. (RSA) § 654:12 permitted applicants to submit "as proof of citizenship: the applicant's birth certificate, passport, naturalization papers if the applicant is a naturalized citizen, a qualified voter affidavit, a sworn statement on the voter registration form used starting 30 days before an election and on election day, or any other reasonable documentation which indicates the applicant is a United States citizen." Ex. AAA1 at 33 (quoting RSA 654:12, I(a) (effective through Nov. 10, 2024)) (emphasis added). In other words, prior to HB 1569, an individual who sought to register to vote could prove his citizenship by either providing documentary proof of citizenship (DPOC) or

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completing a Qualified Voter Affidavit (QVA), in which the applicant swore "under the penalties for voting fraud" that he was qualified to vote. Id.

Although New Hampshire's prior voting registration system did not accurately track voters' use of the QVA to prove citizenship, its Statewide Voter Registration System (SVRS) did track such use beginning with its implementation in April 2024. The available data shows that a substantial number of voters used QVAs to prove citizenship between April 29, 2024, and November 10, 2024, the day before HB 1569 went into effect.

Specifically, data from the SVRS shows that 10.2% of all voter registrants in New Hampshire during that time period, 14,737 voters, relied on QVAs to prove their citizenship. Registrants between the ages of 17 and 24 made up 5,956 of those 14,737 voters, which represents 17.18% of all registrants in that age group during that timeframe.

Dr. Mayer concluded that the overwhelming majority of voter registrants who used a QVA to prove citizenship between April 29, 2024, and November 10, 2024—14,306 out of 14,737 voters—were first-time registrants. That number represents 16.8% of first-time registrants during that timeframe.[6]

The majority of the registrants who used QVAs to prove citizenship between those dates did so during election day registration. SVRS data shows that 10,467 of the 14,737 voters who used QVAs to prove their citizenship did so on November 5, 2024, the day of the general

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[6] There was some confusion during Dr. Mayer's testimony and in certain parties' proposed findings of fact as to whether Dr. Mayer's opinion on this point concerned all voter registrants who used a QVA to prove citizenship between April 29, 2024, and November 10, 2024, or only first-time registrants. Although his initial testimony was somewhat unclear, he later clarified that this portion of his testimony concerned first-time registrants. Doc. no. 150, Trial Tr. at 140:3-143:7. That clarification is consistent with Dr. Mayer's expert report. See Ex. 18 at 22-23 & n.68 (stating that the 16.8% figure "does not include voters who had registered prior to 4/29/2024").

election. That figure represents 11.44% of the voters who registered that day. Another 387 voters used QVAs to prove citizenship on September 10, 2024, the day of the state primary election. That figure represents more than 6% of the voters who registered that day.

In certain towns, those numbers are much higher. For example, according to Ann Shump, a supervisor of the checklist in the town of Durham—New Hampshire's largest college town—more than half of the same-day registrants at state and federal elections there have historically lacked DPOC and relied on QVAs to prove their citizenship for the purpose of registering and voting.

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B. Challenging Registered Voters' Eligibility

RSA 659:27 permits any registered voter of the same town or ward, election official, challenger appointed in writing by a political party committee, or the New Hampshire Attorney General to challenge the right of any voter to cast a ballot in an election. To initiate a challenge, the challenger must complete an "Asserting a Challenge" form, sign it, and swear it under oath and the penalties of perjury.

If the challenge concerns the voters' age, citizenship, domicile, or identity, the supervisors of the checklist determine whether the challenged voter is qualified to vote notwithstanding the challenge.[7] See RSA 659:27-a. The moderator decides challenges based on any other ground. Id.

[7] Before HB 1569, RSA 659:27-a provided that the supervisors decided challenges based on age, citizenship, or domicile only. See Ex. AAA1 at 44-45. The operative version of RSA 659:27-a now provides that the supervisors also decide challenges based on identity.

Upon receiving a challenge to a voter's qualification, the supervisors or moderator must determine if it "is more likely than not that the challenge is well grounded." If the supervisors or moderator determines that the challenge is not well grounded, the challenged voter is permitted to cast a ballot.

Prior to HB 1569, if the supervisor or moderator deemed a challenge well grounded, RSA 659:27 permitted the challenged individual to vote if he completed a Challenged Voter Affidavit (CVA), swearing or attesting to his eligibility to vote under penalties of voter fraud. See Ex. AAA1 at 43.

CVAs had other uses as well. Specifically, if a voter arrived at the polling location without valid photo identification, the voter could execute a CVA and obtain a ballot. Absent a religious objection, the moderator or designee would take a photograph of the voter and attach it to the CVA, which allowed the Attorney General's Election Law Unit to verify the voter's identity after the election.

Although voters have used CVAs regularly to overcome New Hampshire's requirement that voters present valid photo identification at the polls, there is no evidence that any voter ever used a CVA to overcome another person's challenge to his eligibility to vote. In fact, there is no evidence that any voter ever formally challenged another voter's eligibility pursuant to RSA 659:27. Instead, there have been incidents of informal challenges to the eligibility of certain groups of voters, mostly in the form of attempted intimidation outside polling places. Such instances include "mass challenges" against voters in the November 2024 election. Doc. no. 161, Trial Tr. at 20:5-8. The Attorney General's office became aware of the challenges ahead of the election and advised local election officials that the challenges were not well grounded. Id. at 20:9-15.

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C. State Assistance with Elections

Secretary Scanlan is a constitutional officer and the state's chief elections officer. Attorney General Formella is the state's chief legal officer and is responsible for enforcing New Hampshire law, including the state's election laws. Both before and since HB 1569's effective date, the Secretary's office and the Attorney General's office have provided assistance to local election officials and voters who encountered difficulties with the voter registration and election processes. The Elections Division of the Secretary's office operates an Election Help Desk, which election officials can contact regarding any issues. The Help Desk's regular hours are Monday through Friday, 8:00 to 4:30, but these hours are extended on election days. Additional staff, including attorneys from other divisions within the Secretary's office, assist the Elections Division and answer phones on election day. There are five individuals in the Secretary's office who are trained to conduct the statewide SVRS searches that might be necessary to answer the inquiries.

The Attorney General's Election Law Unit provides support to the general public and election officials through an Election Law Hotline. The Hotline can receive calls anytime. It received 2,087 inquiries between June 2023 and June 2025. Some calls to the Secretary's Help Desk are also referred to the Election Law Unit. On state and federal general election days, the Election Law Unit staffs the Hotline with attorneys and investigators, sometimes up to eight or nine individuals, though only three of them are trained to conduct statewide SVRS searches. The number for the Hotline is listed on signs at every polling location in New Hampshire, publicized on the Election Law Unit's website and press releases, and is included in official election trainings. It is not clear how frequently the Election Law Unit provides trainings to election workers, or whether the trainings it offers are mandatory.

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II. HB 1569

Representative Bob Lynn sponsored HB 1569. During comments on the bill, Representative Lynn acknowledged that New Hampshire's then-existing system to verify voter qualifications did not lead to significant, if any, voter fraud. Specifically, he stated, "Do I think there's a huge issue of voter fraud in New Hampshire? No. I don't because I think if there was, we would know about it." Similarly, then-New Hampshire Governor Chris Sununu expressed confidence in New Hampshire's voter verification system, agreeing that it "works very well right now" and stating that he was not looking to make any changes.

Nevertheless, the New Hampshire House of Representatives passed HB 1569 on March 14, 2024. The New Hampshire Senate passed the bill on May 23, 2024. On September 12, 2024, then-Governor Sununu signed HB 1569 into law, and it went into effect on November 11, 2024. HB 1569 either amended, repealed, or repealed and reenacted several laws governing New Hampshire elections. Ex. AAA1.

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A. Elimination of the QVA to Prove Citizenship

HB 1569 repealed and reenacted RSA 654:12, the law that provides the requirements for an applicant registering to vote. Whereas the prior version of RSA 654:12 allowed a registrant to prove his citizenship by providing DPOC or submitting a QVA, the reenacted version of the law removed the QVA from the list of permissible proofs of citizenship. As reenacted, RSA 654:12 permitted registrants to establish citizenship only through "the applicant's birth certificate,

passport, naturalization papers if the applicant is a naturalized citizen, or any other reasonable documentation which indicates the applicant is a United States citizen."[8] Ex. AAA1 at 36.

As mentioned, a significant number of voters have used the QVA to prove their citizenship when registering to vote. The court concludes from the evidence at trial that they did so because many New Hampshire voters either do not possess DPOC or do not have quick access to it. Survey data shows that approximately 38% of U.S.-born eligible New Hampshire voters do not possess a passport and approximately 1% of U.S.-born eligible New Hampshire voters do not possess a birth certificate. Another 2% of New Hampshire voters have a birth certificate that does not match their current name and do not have a marriage license that could prove their name change. The plaintiffs' expert, Dr. Michael Herron, offered a conservative estimate that between 5,433 and 31,291 eligible New Hampshire voters do not possess acceptable DPOC at all. That figure rose as high as 59,583 if he assumed that people who report that they "don't know" whether they have DPOC in fact do not possess such documentation. He further estimated that even of those eligible New Hampshire voters who do possess some form of DPOC, between 89,934 and 153,213 cannot retrieve their documents within one day. For example, Kara Montagano, a recent college graduate and former Youth Movement hub coordinator at Keene State College, testified that she saw many students who kept their documentation in their parents' homes and could not access it within a day. Doc. no. 154, Trial Tr. at 15:24-16:10. Other young voters, such as Tess Sumner who testified at trial, keep their DPOC in a safe at their parents' home, and they cannot access those documents without their parents' assistance. Id. at

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[8] As discussed below, the legislature subsequently amended RSA 654:12 in 2025 to permit proof of a registrant's prior or current registration in a different town or ward as proof of citizenship. Ex. AAA2 at 12.

31:1-25. Further, an estimated 17,967 to 53,826 eligible voters could not retrieve their DPOC even if allowed multiple days to do so.

Even voters who possess and have ready access to DPOC rarely carry it with them. Survey data shows that only approximately 11% of eligible voters in New Hampshire who possess a passport and approximately 7% of eligible voters in New Hampshire who possess a birth certificate carry those documents with them regularly.

Like its predecessor version, the current version of RSA 654:12 does not define the term "other reasonable documentation." New Hampshire election officials have no consistent understanding of what "other reasonable documentation" of citizenship includes, or even what standard applies to determine what qualifies as "other reasonable documentation." Indeed, the Secretary's office has issued conflicting guidance. Initially, the Secretary's guidance after HB 1569 took effect stated that the standard was whether the documentation established that it "is more likely than not" that the registrant is a citizen. Ex. 209 at 2; Ex. 210 at 2. But the Secretary's later guidance removed the more-likely-than-not standard and provided only that the other reasonable documentation must "indicate[] you are a United States citizen." Ex. 211 at 2. Not only is the standard shifting, but also shifting is its application to known forms of documentation. In response to a question from an election official, the Secretary advised in his initial guidance that Global Entry cards are not acceptable proof of citizenship. Ex. 168 at 11-12. But the Secretary now states that Global Entry cards are acceptable proof of citizenship, though, at the time of trial, his office had not updated its guidance to local election officials to reflect this changed analysis. Doc. no. 164, Trial Tr. at 26:22-27:5.

Also at trial, various election officials offered contradictory responses as to whether they would accept certain documentation as proof of citizenship. They disagreed, for instance, about

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whether an expired passport constitutes other reasonable documentation of citizenship and, if so, whether its acceptability depends on its date of expiry and what that limit is. The Election Director for the Secretary of State, Patricia Piecuch, testified that she would not know and would need to seek legal advice before answering if a local official asked her on election day what standard he should apply and whether a document not already listed as acceptable constituted other reasonable documentation of citizenship.

Opponents of HB 1569, including many local election officials, had concerns that eliminating the QVA would lead to delays and would prevent certain eligible voters from registering to vote because they could not prove their citizenship. The 2025 elections bore out those concerns. Although the Secretary's office and the Attorney General's office did not attempt to track the effect of eliminating the QVA in those elections, the Secretary's office is aware that several voters were unable to register to vote because they arrived without DPOC, and at least some of them did not return to vote after they were turned away.

The New Hampshire Campaign for Voting Rights (NHCVR), a nonpartisan organization, monitored HB 1569's effect on the March 2025 municipal elections by recruiting observers for as many polling places as possible. Sarah Chouinard, the voting rights manager at NHCVR, testified that the organization tracked at least 49 voters turned away from the March 2025 municipal elections specifically because they lacked DPOC, and an additional 55 voters turned away from those elections for reasons that NHCVR was unable to confirm. NHCVR was further unable to confirm how many of those voters who were turned away were able to return later and vote. NHCVR also sought to track voters turned away from the May 2025 town elections, during which at least seven voters were not allowed to register, and city elections in September through

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November 2025, from which at least 90 voters were turned away, "overwhelmingly" because they lacked DPOC. Doc. no. 154, Trial Tr. at 151:2-11.

These voters' circumstances varied. NHCVR tracked several instances of first-time voters seeking to register who did not bring their birth certificates with them and were turned away because they did not have DPOC. NHCVR also tracked four individuals, all women, who during the March 2025 elections were not allowed to register because they did not possess name-change documentation to prove that they were the person reflected on their citizenship documents. Although the NHCVR published its findings, held press conferences with affected voters, and received coverage in various publications, the Secretary's office did not contact the organization regarding its observations.

Ms. Chouinard and former Election Law Unit Chief and current Deputy Secretary of State Brendan O'Donnell offered testimony about Earl Rinker III, an 89-year-old man who had moved from one voting ward in Manchester to another, attempted to vote in the September 2025 primary and was initially turned away because he did not bring proof of domicile. He went home and returned to the polling location with his proof of domicile but was then told that he also needed documents to prove his citizenship. Mr. Rinker explained that he was a former ward clerk in Manchester and had been voting in New Hampshire for over 70 years. He was turned away again. After Mr. Rinker subsequently contacted the Hotline, Investigator Tracy and Deputy O'Donnell were able to confirm his prior registration status. They then reached out to the local election officials who had not allowed Mr. Rinker to vote and told them that they should accept

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his prior registration status as proof of citizenship if he returned to the polling location to vote. Mr. Rinker did not return.[9]

Local election officials and observers also testified regarding their personal observations of would-be voters who were not allowed to register during the 2025 municipal elections because of HB 1569. Supervisor Shump testified that in Durham, of the six voters who sought to register on the day of the March 2025 municipal election, only two brought DPOC with them. Although three were eventually able to register, one voter—a high school student accompanied by his classmates who were there to observe his registration—was turned away because he did not have DPOC and never returned to vote. Supervisor Shump testified that this was the only time in her 20 years of service that she has ever had to turn away a voter who claimed to be a citizen because the voter did not bring citizenship documentation to the polls.

In the April town meeting in Conway, Olivia Zink, Open Democracy's executive director, personally observed four individuals who were not allowed to register because they did not present DPOC, only two of whom ultimately returned. During the March town elections, Ms. Zink traveled to multiple polling locations to observe, including a location in Andover where there had been reports of six students from Colby Sawyer College who were turned away and not able to register to vote. And in a later election, she observed one voter in Keene who, unable to confirm their past registration status with the Secretary of State's online database and with the assistance of the town clerk after 15 minutes, said they would "try to come back after work."

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[9] The defendants objected to Ms. Chouinard's testimony concerning Mr. Rinker on hearsay grounds but subsequently offered Deputy O'Donnell's testimony regarding Mr. Rinker's circumstances.

Doc. no. 143, Trial Tr. at 50:7-9. Ms. Zink stayed at the polling location the entire day as an observer, and the voter never returned.

During Bethlehem's March 2025 town meeting, Bethlehem officials were approached by an individual who wanted to register but lacked DPOC. Julie Seely, one of Bethlehem's supervisors of the checklist, observed that when the prospective registrant was told that he must provide DPOC, he stated that he would search for it and return to register. The voter did not return that day.

During Concord's November 2025 election, supervisor of the checklist Katherine Robert observed election officials turn away a recently divorced woman who had changed her name back to her maiden name, and the "voter rolls still had her married name." Doc. no. 145, Trial Tr. at 62:8-20. The election officials asked the voter if she had any documents including "anything electronic on her phone that she could pull up that would have showed that that divorce was final, and the name was changing." Id. at 62:24-63:2. The voter was unable to produce any such documents and was turned away. The voter was encouraged to return to the polling location if she could find the paperwork, but she did not return.

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Director Piecuch testified that the Secretary's office instructs election officials to contact the Attorney General's Hotline before they refuse to allow an individual to vote. Despite the evidence of voters who were not permitted to register during the 2025 elections, there was no evidence that any election official contacted the Attorney General's office before turning away any voter.

The record evidence does not represent the full panoply of New Hampshire voters who were unable to register to vote in an election in 2025 because they did not possess DPOC. The state did not track those numbers and the myriad voting organizations gathered incomplete data.

For example, NHCVR was able to recruit observers for only approximately 20 polling locations out of more than 100 towns in which elections were held in March 2025, and the number of hours covered by observers varied by polling place. Based on the testimony and evidence presented at trial, the court can reasonably conclude that additional New Hampshire voters were unable to register to vote during the 2025 elections because they did not possess DPOC when they attempted to register.

Many fewer voters turn out or seek to register during municipal elections like those held in 2025 than do so during state and federal elections. To appreciate the difference in scale, one need only review the testimony that six new voters sought to register on election day in the March 2025 Durham municipal election, whereas about 2,500 new voters registered on election day in the November 2024 federal election in that town, more than 1,000 of whom used a QVA to prove their citizenship. Doc. no. 152, Trial Tr. at 61:10-19; doc. no. 155, Trial Tr. at 81:25-82:8. And multiple witnesses acknowledged that voters in state and federal elections generally tend to be less likely to understand or able to navigate the voter registration requirements because voters who participate in municipal and other local elections tend to be more highly motivated and informed.

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HB 1569 has not only affected election day registration. Voters have also been turned away from registering in other contexts since HB 1569 took effect. In October 2025, election officials in Bethlehem rejected registration applications from three voters who "were women who used birth certificates with their maiden names." Doc. no. 153, Trial Tr. at 28:12-19. These three women were eventually able to register to vote in January 2026 by providing their birth

certificates and marriage licenses.[10] Also in October 2025, SangYeob Kim, a naturalized citizen and attorney, was not allowed to register to vote despite presenting a United States passport to prove his citizenship. The town clerk incorrectly told him that he was required to present his naturalization papers in addition to his passport. Kim's colleague, also an attorney, later contacted Deputy O'Donnell. A few days later, Deputy O'Donnell clarified that Kim was correct and needed nothing more than his United States passport to prove his citizenship. Kim successfully registered to vote months later.

B. Elimination of the CVA to Overcome a Successful Challenge

HB 1569 also eliminated the CVA procedure for resolving challenges to a voter's eligibility. The bill repealed the version of RSA 659:27 that permitted a person to vote after a successful challenge if he completed and swore to a CVA. See Ex. AAA1 at 43. HB 1569 reenacted a modified version of 659:27, which now provides that if "the moderator determines that it is more likely than not that the challenge is well grounded, the moderator shall not receive the vote of the person so challenged."

HB 1569 also repealed and reenacted a modified version of RSA 659:27-a, which sets forth the procedures for a challenge to a voter's eligibility. Among other changes, the reenacted version of RSA 659:27-a eliminated the following sentence: "If it is ruled that the voter is not qualified or that the challenge is well grounded, the challenged person may vote only if he or she completes and swears to a challenged voter affidavit." Ex. AAA1 at 45. The revised version of

[10] Two of these women were both born and married in Massachusetts, and so Massachusetts issued their birth certificates and marriage licenses. As discussed below, these circumstances are relevant to HB 1569's effect on voters in light of subsequent legislation.

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RSA 659:27-a replaced that sentence with the following language: "Before ruling on the challenge, the moderator shall give the challenged voter an opportunity to be heard. A person aggrieved by the moderator's decision on a voter challenge may obtain immediate review of the decision in the superior court pursuant to RSA 654:12, V."

Deputy O'Donnell testified that both the Secretary's office and the Election Law Unit have advised election officials that if any voter might be turned away or challenged, officials should reach out to the Attorney General's office before making a determination. That direction is not included in any written guidance, however, and local election officials are responsible for the ultimate decision on any challenge.

Supervisor Shump testified that party-appointed challengers are a common occurrence at the polls in Durham. Ms. Zink testified that since HB 1569 went into effect, Open Democracy has seen social media posts and other efforts to recruit challengers for the polls on election day, including from political party committees. Supervisor Shump also testified that, in her experience, voters who are already registered are unlikely to bring a birth certificate or passport with them when they go to vote, making it more difficult to overcome a challenge now that they cannot complete a CVA.

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Regarding a voter's right to seek review in New Hampshire Superior Court, all polling locations in New Hampshire are required to post a "purity of elections" poster that states that a "voter not allowed to vote as a result of the determination of the supervisor of the checklist may take an immediate appeal to the superior court as provided in RSA 654:12, V." Ex. KK5 at 1. With assistance from the Secretary's office or the Attorney General's office, certain superior courts have election-day docket procedures, which may include having a standby judge or a designated WebEx courtroom, in order to facilitate faster disposition of election-related matters.

The filing fee for a civil action in superior court is $325. See https://www.courts.nh.gov/sites/g/files/ehbemt471/files/documents/2021-06/filing_fees_superior.pdf. There is no categorical fee waiver for cases involving voter challenges.

III. HB 464

On August 1, 2025, after this litigation began, Governor Kelly Ayotte signed into law 2025 House Bill 464 (HB 464). HB 464 amended or modified certain of HB 1569's provisions. For example, HB 464 amended RSA 654:12 to state that supervisors and clerks may now accept as proof of the applicant's citizenship "proof that the applicant was previously or is currently registered to vote in a different town or ward in New Hampshire." RSA 654:12, I(a). HB 464 also added the following language to RSA 654:12:

> The department of state shall provide access to data from centralized voter registration records, records from the department of safety, and New Hampshire vital records provided in accordance with RSA 654:45 to assist voters in providing proof of citizenship, age, domicile, and identity to the city and town clerks. The secretary of state shall work with the city and town clerks to ensure access on election day at the polling location. If proof of age, citizenship, domicile, or identity information of a voter is provided pursuant to this section, it shall satisfy that registration requirement for that qualification. Absence of data shall not disqualify a person. It shall be the applicant's responsibility to provide appropriate additional proof of their qualifications as required by this chapter.

RSA 654:12, VI.

HB 464's amendments to certain New Hampshire statutes became effective at different times. The amendment to RSA 654:12, I, which allowed proof of citizenship through proof that an applicant was previously or currently registered to vote in New Hampshire, became effective

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on September 30, 2025. Ex. AAA2 at 12. RSA 654:12, VI regarding access to a voter's records became effective on February 1, 2026, shortly before the trial commenced in this case. Id.

Practically speaking, HB 464 made two substantial changes to the process by which a registrant seeking to vote could prove his citizenship. First, it established that proof that a voter was currently or had been previously registered to vote in another New Hampshire ward or town constituted proof of citizenship.[11] Second, it sought to give election officials access to various records to allow them to confirm a registrant's citizenship if that registrant does not present DPOC. These records, which local election officials can access through the SVRS, include records from the New Hampshire Division of Vital Records and the New Hampshire Division of Motor Vehicles.

Although not required by HB 464, the Division of Vital Records recently took steps to make it easier for New Hampshire voters to access certain records to prove their citizenship in advance of registering to vote. On October 17, 2025, Kristin Martino, the Director and Registrar for the Division, issued a memorandum to town and city clerks informing them that "town and city clerks can now issue free certified copies of New Hampshire vital records for voter registration purposes only." Ex. PP at 1. These vital records include records of birth, marriage, divorce, civil union, and dissolution, and they can be obtained from any New Hampshire town or city clerk's office, or from the Division of Vital Records. Id. As of February 18, 2026, 21 free certified copies of vital records had been issued for voting purposes.

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[11] Notably, the category of voters who were previously or are currently registered to vote in another New Hampshire ward or town includes voters who had proven their citizenship using the QVA.

A. Secretary's Guidance Regarding HB 464's Changes

In guidance issued to local election officials on January 5, 2026, the Secretary stated that, under the new process authorized by HB 464, the SVRS "can now be used to verify certain citizenship, age, name change, and death information for voter registration," and provided an "overview" of how a new SVRS search process is intended to function. Ex. UU at 1.

To run a search under this new system, the local election official must require the voter to execute, in addition to a voter registration form, an "Application for Confidential Verification of a New Hampshire Vital Record or DMV Record Search for the Purpose of New Hampshire Voter Registration." Ex. 176. Although the form provides no clear instructions, depending on which record the voter seeks to use to confirm his citizenship, the form asks the voter to supply various categories of "highly sensitive" information, Ex. UU at 2, if they are "looking to verify [records] for voter registration purposes ONLY," Ex. 176 at 1. For example, if a voter is authorizing the election official to search for his birth certificate, the form asks the voter to provide his name as it appears on his birth certificate, the town or city of his birth, and his parents' first and last names. Although the form suggests that the voter needs to supply each piece of requested information for the election official to be able to conduct the search, Director Piecuch testified that the only information necessary to conduct a search is the voter's name and date of birth. The additional information that the voter fills out assists the election official with the search but does not affect whether the official will be able to find the requested record.[12]

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[12] As explained in a later section of this order, the Open Democracy Plaintiffs filed a post-trial motion for sanctions against the defendants. Doc. no. 167. The motion requests that the court find "less credible" the testimony of any defense witness that appears to conflict with Secretary Scanlan's deposition testimony on issues related to HB 464's implementation and give "lesser weight" to undisclosed testimony regarding HB 464's processes. Id. at 13. Director Piecuch's testimony concerning the information necessary for an SVRS search is part of the

To complete the search, local election officials must then use their login credentials to access the SVRS search portal and enter the voters' information in a series of search fields corresponding to the Application form. Ex. VV at 1-2. The SVRS instructions state that "if the entered search criteria does not match what is listed in the Vital Records or the DMV Records data exactly, or the record has not been provided or could be incomplete by the applicable department, [the local official] may receive a warning message that states, 'No Records matching the entered search criteria found.'" Id. at 2.

The instructions further provide: "Before ANY search can be completed within the Vital Records or DMV inquiries, **the voter shall be present in front of you with a completed Application for Confidential Verification of a New Hampshire Vital Record or DMV Records form** (found in SVRS/Help Instructions) **AND photo identification**." Id. at 1. The instructions also repeatedly warn: "**Should you perform searches without the voter present or a completed form, your SVRS credentials could be suspended or revoked, and you could be subject to criminal penalties**." Id. at 1, 4, 7, 10, 13, 16, 19, 22.

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Despite these written instructions, testimony indicated that certain state officials, such as authorized employees in the Secretary's office or the Attorney General's office, can perform voter queries through the SVRS without a voter present. So, if election officials have difficulties with searches, they may call the Hotline or the Help Desk for assistance.[13] Further, these state

testimony addressed by the motion. For the reasons explained below, the court agrees with the Open Democracy Plaintiffs that the defendants violated their discovery obligations. However, the testimony that is the subject of the motion for sanctions does not change the court's conclusions of law in this case. Therefore, the court does not impose any sanctions on the defendants and its credibility determinations are based solely on the evidence presented at trial.

[13] Deputy O'Donnell testified that local election officials are also permitted to station an employee at the town clerk's office to run election-day queries, without contacting the Hotline or

users have additional tools that offer them broader search capabilities than those available to local election officials, including the ability to run partial-name searches.[14]

B. HB 464's Limitations

The Secretary's guidance recognizes certain limitations in the use of SVRS searches to prove a registrant's citizenship. Specifically, the January 5, 2026 guidance provides:

> It is important to note that this process is not guaranteed to prove a person's citizenship in all cases. It may confirm citizenship for registrants: (i) who were previously registered to vote in New Hampshire; (ii) who were born in New Hampshire; (iii) who previously provided proof of citizenship when obtaining a New Hampshire driver's license; or (iv) whose name change is reflected in a New Hampshire vital record or DMV record.

Ex. UU at 2. The guidance further states that the "SVRS will not be able to prove the citizenship of other registrants, who will need to provide documentary proof of citizenship when registering to vote." Id. It adds that it "is possible that vital records or DMV information may be incomplete

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Help Desk, if the officials need assistance. Director Piecuch appeared to agree that such an arrangement is permissible. The court does not credit that testimony insofar as it suggests that local election officials will seek or town clerks will provide such assistance. The Secretary's instructions to town clerks and local election officials explicitly state that an official may search within vital records or DMV records only if the voter is "present in front of you," and threatens criminal penalties for local officials who run searches without the voter in front of them. Further, Secretary Scanlan testified that a local election official is permitted to run an SVRS search only if a voter is in front of him.

[14] The court notes that both Deputy O'Donnell and Director Piecuch testified at trial about the state users' ability to run partial-name searches. This testimony directly contradicts the Secretary's designated Rule 30(b)(6) witness's deposition testimony, offered mere days before trial, and appears to be at odds with guidance and instructions provided to election officials. Because state users' ability to perform partial-name searches in the SVRS does not change the court's conclusions in this case, the court credits Deputy O'Donnell's and Director Piecuch's testimony. However, had this fact changed the court's analysis, the court likely would have given the testimony less weight in light of the defendants' discovery violations. Nonetheless, the court credits it.

or absent. In such cases, individuals must prove their qualification (citizenship, domicile, name change, etc.) with documentation." Id. at 3.

The examples of "other registrants" for whom the SVRS will not be able to prove citizenship are plentiful. For example, an SVRS search will not locate a birth certificate for the approximately 60% of New Hampshire residents who were born in another state. And records suggest voters born in a state other than New Hampshire or outside of the United States represent a significant percentage of voters who lack DPOC and previously relied on QVAs to prove their citizenship. Analysis of citizenship QVAs from four New Hampshire municipalities between June 1, 2024, and November 10, 2024, show that more than 72% of them—829 out of 1146—were executed by voters born outside of New Hampshire, either in other states or overseas.[15] Many of these voters born in other states incorrectly believe they can obtain their birth certificates from the Division of Vital Records, as Director Martino testified.

In addition, an SVRS search will not locate marriage records pertaining to marriages that occurred in other states, or divorce records pertaining to divorces that occurred in other states. This limitation particularly impacts married or divorced women who changed their names, as a

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[15] These totals come from a summary exhibit that the plaintiffs offered, Ex. 356, which summarizes the 1146 QVAs executed in the four municipalities during that time period, Ex. 219-222. In their proposed findings of fact, the defendants take issue with the summary because it relies on certain QVAs that purportedly "reflect[] numerous vagaries on the[ir] face." Doc. no. 168, ¶ 83. The defendants' criticisms are largely inconsequential, such as complaining that certain affiants failed to note the locations of their naturalizations. At most, the defendants potentially call into question seven of the affidavits, in which the affiants neglected to indicate whether they were relying on the QVA to attest to citizenship, rather than to identity or age. Considering that each of these affiants stated that they were born in a foreign country, the court finds that their QVAs were almost certainly executed to prove citizenship. Even if not, however, removing those affidavits from the calculation would still mean that more than 72% of the aforementioned citizenship affidavits were executed by voters born outside of New Hampshire, either in other states or other countries.

2023 survey by the Pew Research Center estimated that over 80% of women in opposite-sex marriages took their husband's last name or hyphenated their surnames when they married. The inability to search for out-of-state marriage licenses or divorce records affects women more than men by a 15:1 margin.

Almost no birth certificates for births before 1935 are available for searching in the SVRS. Nor are certain additional birth certificates from 1949 to 1950 or "delayed" birth certificates (those filed six months or more after birth).

An SVRS search will not return marriage records for marriages that occurred before 1960. Records of marriages occurring up to 2015 only reflect the names of the couple before marriage and searches for the couple's current names will not be successful. An SVRS search will not produce divorce records before 1979 and within the last six months. People in New Hampshire can also obtain name changes in probate and family court, and an SVRS search will not generally reflect those changes.

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DMV records that are searchable within the SVRS will show whether some individuals are listed in DMV records as United States citizens. But that data is not comprehensive or guaranteed to be accurate. First, the DMV records that are searchable under HB 464 include only New Hampshire drivers' licenses and non-driver identification cards. They do not include out-of-state drivers' licenses or non-driver identification cards. State records show that more than 43,000 active New Hampshire voters used out-of-state licenses or identification cards to register. Another approximately 118,000 active New Hampshire voters do not have a New Hampshire driver's license or identification card number associated with their registration.

Second, the DMV database will not accurately report the citizenship status of naturalized citizens who applied for a license before they became citizens unless they first update their status

with the DMV. Indeed, the plaintiffs' expert, Dr. Kenneth Mayer, found that this exact issue was widespread when he did work for "the U.S. Department of Justice in 2012 to analyze claims that were being made by the state of Florida that there were noncitizens registered to vote based on data in driver's license files." Doc. no. 150, Trial Tr. at 80:1-4. When analyzing noncitizenship flags by the state of Florida based on DMV data, Dr. Mayer found that "99.9 percent of those noncitizenship flags were incorrect, that the person was actually a U.S. citizen and had naturalized after first obtaining a driver's license or ID." Id. at 138:5-7. The SVRS instructions state that a registrant who is listed in DMV records as a Permanent Resident or Temporary Registrant "is **not** a US citizen and **cannot** register to vote." Ex. VV at 22. The instructions later qualify that statement in smaller text on a different page, acknowledging that the "voter applicant could have received citizenship after they received their identification which may result in the DMV not being updated at the time of the applicant registering to vote." Id. at 24.

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Finally, the reliability of the DMV citizenship data is questionable. In an April 25, 2025 letter to DMV Director John Morasco, the Secretary requested information "showing how the licensee reported their United States Citizenship status when obtaining a license or non-driver ID from your office," and in doing so stated that he "understood that this is only a record of what the applicant self-reported. The data point is as provided by the applicant, it has not been vetted nor verified for purposes of determining United States citizenship . . . ." Ex. 145A at 1. There is no evidence that the citizenship data provided to the DMV has been verified and the defendants admit that they have not investigated the accuracy or completeness of the DMV data.

Thus, even if HB 464's additional processes to confirm a registrant's citizenship using prior registration, DMV, or vital records worked flawlessly—and as discussed below, they will

not—there would remain a significant number of registrants whose records would be missing or inaccurate. Those registrants will still be unable to vote unless they provide DPOC.

The cost to obtain DPOC may be substantial. For example, it costs at least $65 to obtain a passport card and $165 to obtain a passport book, with an additional cost for expedited service. Renewing an expired passport costs $130. The cost to obtain a birth certificate from another state varies. A birth certificate from Massachusetts costs $20 when obtained in person, $32 when obtained via a request by mail, and $54 when ordered online or by phone. The cost of a birth certificate in other states ranges from $10 in Florida to $34 in Michigan and may increase depending on the method of ordering. A Certificate of Citizenship (referenced in the New Hampshire Election Procedure Manual) costs $1,335 if the voter uses an online application and $1,385 if he uses a paper application. A replacement certificate of naturalization (form N-565) costs $505 via an online application and $555 via a paper application. A Consular Report of Birth Abroad is $50, and the application must be notarized.

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Even in the most optimistic scenario, the processes available to election officials to confirm a registrant's citizenship under HB 464 will not work perfectly. That is particularly true on federal and state general election days when the number of voters seeking to register will be higher.

Only a small number of election officials at each polling location have access to the SVRS, and certain polling locations have no officials with SVRS access. For example, no one in Concord's polling locations in any of its 10 wards has access to the SVRS. Nashua has nine polling locations but only six individuals have access to the SVRS. Local election officials with SVRS access often deal with many priorities on election day, are not always available to run searches, and are not permitted to share their credentials with anyone else. Thus, even if local

officials could run SVRS searches accurately and quickly, voters seeking to register on election day would still almost certainly encounter delays because of the limited number of available officials with SVRS access.

Even those local officials with the authority to run SVRS searches will not always be able to run them accurately and quickly. Not all election officials have laptops to use to access the SVRS, as state offices are not responsible for providing them. Moreover, many polling locations do not have access to reliable internet. The Secretary acknowledged this problem in his initial guidance on HB 1569, which included as one of the "Frequently Asked Questions," "We often have difficulty with wireless connectivity at our polling place. Without having access to SVRS we may be unable to establish whether someone was previously registered in New Hampshire, and therefore not required to prove citizenship, what should we do?" Ex. 168 at 12. The answer provided was, "If you do not have access to the statewide voter registration system and have no way of verifying the voter's registration status, the voter will need to provide you with proof of citizenship." Id.

A June 2025 survey of polling places conducted by the Secretary's office concluded that 84.18% of polling places have internet, 10.75% do not have internet, and about 5% are not sure. Ex. 76. The survey also found that about 76% of polling places have good cellular access, around 15% do not, and around 7.5% are not sure. Id. It further found that about 28% of those polling places without a landline or good cellular service do not have internet. Id. At least 4 polling places have no telephone or internet access. Id. The purpose of this survey was to identify which specific polling places do not have the ability to access the SVRS on election day to perform the searches authorized by HB 464.

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Even with reliable internet, it is unclear how long it will take for an SVRS query to produce a result. While certain witnesses testified that an official should be able to complete an SVRS search within one or two minutes, others testified that it takes longer. One observer saw it take up to 10 or 15 minutes for an SVRS search to return prior registration information for a voter in the November 2025 election in Keene.

Further, as the SVRS instructions note, the SVRS available to election workers uses an exact match methodology, meaning that responsive records will be returned only if they perfectly match a local election official's name-and-birthdate search query. Thus, if there is a minor typographical error, and nearly all witnesses acknowledged that mistakes by election officials are common, or if a voter provides anything other than his given first name, the election official will not find the voter's record during the SVRS search.

Even if the SVRS returns a match, there may still be confusion or delays in registering a voter. Although the court credits Director Piecuch's testimony that only a voter's name and date of birth are actually necessary to perform a search in the SVRS, the vital record application form asks voters to supply several other pieces of information to help election officials verify the search results. That additional information may not match the voter's record in the SVRS, which could cause an election worker to doubt the search results. For example, when requesting a search for a birth certificate, registrants are asked to provide the city or town where they were born, which is typically the location of a hospital rather than the location of their home. It is possible that certain voters do not know the location of the hospital in which they were born, or may assume, for example, that Dartmouth-Hitchcock Medical Center is in Hanover (the location of Dartmouth College), though it is actually located in Lebanon, an adjacent town.

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A local election official may also get "locked out" of SVRS for engaging in too many searches too quickly or for making too many mistakes when searching because the system may deem the activity "suspicious." Doc. no. 164, Trial Tr. at 111:4-17. If that occurs, the local official must contact the Secretary's office to restore access.

As noted, voters and election officials call either the Attorney General's Hotline or the Secretary's Help Desk to resolve voter-registration issues. The frequency of those calls will undoubtedly increase on federal and state election days. Neither the Help Desk nor the Hotline is equipped to handle large numbers of requests for assistance with SVRS searches on election day. There are only five individuals in the Secretary's office and three individuals in the Attorney General's office trained to conduct statewide SVRS searches. As the Secretary acknowledged, his office could not handle thousands of calls to confirm voter eligibility on election day. Given the substantial number of New Hampshire voters who register on election day and the significant number of them who relied on the QVA to prove citizenship in the last general election, it is certain that calls to the Hotline and Help Desk will increase markedly in future elections and cause further delays in the registration process. Considering that long lines to register were common in various towns even before HB 1569 and HB 464 went into effect, and that both the plaintiffs' and the defendants' witnesses testified that some people will abandon efforts to register and vote when lines are long, the court concludes that the additional time needed to register to vote due to the elimination of the QVA will deter certain voters from registering and voting entirely.

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IV. State Interests

The defendants offered three state interests that they assert justify any burden on voters' rights to vote imposed by HB 1569: 1) ensuring election integrity and preventing wrongful voting; 2) increasing voter confidence; and 3) protecting the public fisc.

A. Election Integrity

Wrongful voting, meaning unqualified voters intentionally or unintentionally casting ballots, is extremely rare in New Hampshire. Between 1998 and 2024, voters cast roughly 8.3 million votes in 14 federal and state general elections. Dr. Lorraine Minnite, the plaintiffs' expert on the subject of voter fraud, found only 47 instances of wrongful voting in New Hampshire during that 26-year period, including in local elections.

If wrongful voting is rare in New Hampshire, wrongful voting by noncitizens is essentially non-existent. Between 1998 to 2024, only eight identified noncitizens may have unlawfully cast a ballot. Those eight noncitizens cast, at most, 26 ballots in New Hampshire. Thus, at a maximum, instances of wrongful voting by noncitizens represented 0.00031% of votes cast in federal and state general elections in New Hampshire between 1998 and 2024.[16]

Voter fraud, meaning unqualified voters intentionally casting ballots while knowing that they are not entitled to vote, is even rarer in New Hampshire. The defendants agree that instances of voter fraud are "miniscule" and virtually non-existent in the state. Doc. no. 165, Trial Tr. at 53:3-8. Of the eight instances of noncitizen registration in New Hampshire from 1998 and 2024,

[16] That figure may even overestimate the rate, as the 8.3 million figure omits ballots cast in local elections, whereas the 26 ballots include those cast by noncitizens in any type of election.

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only one is alleged to have involved intentional fraud, and that voter's criminal prosecution remains ongoing. Further, at most, three of the eight noncitizens who registered to vote or voted in New Hampshire used a QVA to prove citizenship. Indeed, five of the eight noncitizens who cast ballots did not prove citizenship at all but were allowed to register and vote due to poll-worker error.

HB 1569 did not reduce reports of wrongful voting. The number of wrongful voting cases reported to the Attorney General's office in 2023 is "fairly close" to the number reported in the 2025 local elections. Doc. no. 162, Trial Tr. at 60:14-23. Those years are used for comparison because they involve only municipal and local elections.

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B. Voter Confidence

New Hampshire residents have a high degree of confidence in the state's elections. Surveys show that approximately 90% of people in New Hampshire had confidence in New Hampshire elections before HB 1569. To the extent that voter confidence in New Hampshire has declined in recent years, voters are more concerned with the way elections are conducted outside of the state than within the state.

The Secretary created a Special Committee on Voter Confidence (Special Committee) in 2022. The Special Committee was made up of "a very diverse group of knowledgeable individuals" hand-chosen by the Secretary to ensure "that the whole political spectrum was represented." Doc. no. 165, Trial Tr. at 6:1-11. The Special Committee traveled around the state of New Hampshire, taking approximately 47 hours of public testimony from approximately 400 voters regarding their confidence in New Hampshire elections. Although it concluded that the majority of "New Hampshire voters have confidence in our elections," that "New Hampshire

elections are accurate," and that "New Hampshire is well served by local election officials," Ex. R at 4 (cleaned up), the Special Committee recommended ways to improve voter confidence. These included improved recruitment and training of local election officials, expanded voter education, use of new ballot counting machines that use paper ballots, expanding the use of random audits, improved access for public observation of the electoral process, changes to the process for updating voter checklists, increased auditing of election results, and legislation "to make it easier for citizens to obtain appropriate voter information." Id. at 8.

The Special Committee did not recommend any changes to New Hampshire's proof-of-citizenship laws. It did not recommend eliminating the QVA. It did not recommend eliminating the CVA.

Neither the Secretary's office nor the Attorney General's office has taken any steps to measure the effect of HB 1569 on voter confidence. Dr. Mayer testified that there is no evidence that HB 1569 will improve voter confidence. He referred to literature on which he relies in his research that shows "clearly that voter confidence in election integrity has actually nothing to do with the actual integrity of the electoral process. Voter opinions are affected by whether their preferred candidate won the most recent election, their partisanship, their experience when they voted, elite signaling, and false claims of electoral irregularities." Doc. no. 150, Trial Tr. at 108:21-109:2. He also testified that "survey data show that most voters aren't even remotely aware of the things that election officials do to protect the integrity of elections, so there's just simply no evidence that 1569 and laws like that will do anything to enhance voter confidence." Id. at 109:2-6. To the contrary, as the Secretary acknowledged, it is possible that HB 1569's elimination of the QVA could lead to a decrease in voter confidence if large numbers of voters are unable to vote because they lack DPOC. Doc. no. 165, Trial Tr. at 57:3-7. Dr. Mayer agreed

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with the Secretary's concerns. Doc. no. 150, Trial Tr. at 109:6-10 ("If anything, [HB 1569] will do the reverse because the academic literature also shows that voters who have a frustrating experience at the polls, people who try to vote and can't, that they are less -- they are more likely to report low confidence in election outcomes.").

C. Protecting the State's Resources

The Attorney General's Election Law Unit is responsible for investigating instances of alleged wrongful voting. Their investigations most commonly involve voters' domicile and, to a lesser extent, their identity. Investigations into voters' citizenship are the least common of those three. Investigator Tracy testified that, in part because New Hampshire law did not require investigations into citizenship affidavits, the state has "never systematically investigated" QVAs for citizenship. Doc. no. 162, Trial Tr. at 99:12-17.

Investigations into noncitizen voting constitute approximately 2% of the Election Law Unit's work, and Deputy O'Donnell testified that the Unit had sufficient staffing to handle those investigations. Most of the investigations into noncitizen voting did not involve the use of a QVA. Instead, they arose largely from election-worker errors.

The cost to implement HB 464's procedures was and continues to be substantial. The state paid a vendor more than $167,000 to update the SVRS to comply with HB 464. Doc. no. 165, Trial Tr. at 59:5-7. The state also spent a "significant" amount of staff time negotiating a memorandum of understanding with the Department of Safety and taking other steps necessary to implement HB 464. Id. at 58:18-59:4. More spending will follow: both the Secretary's office and the Department of Safety will have to continue to devote staff time to provide data for the SVRS and support the mechanisms to transmit that data, to train local and state officials in

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running the necessary searches, and to actually run searches to confirm voter citizenship. The Secretary also agreed that he will have to go "above and beyond in order to educate the public" about the requirement to bring DPOC to register. Id. at 58:9-12.

V. The Plaintiffs' Injuries From HB 1569

Each of the plaintiffs has suffered or is substantially likely to suffer an injury from HB 1569.

A. Youth Movement

Youth Movement is a nonprofit membership organization that effectuates political change by "building the power and influence of young people" in New Hampshire. Doc. no. 150, Trial Tr. at 9:5-15. All of Youth Movement's core organizational goals involve motivating younger voters to get to the polls and ensuring that they are able to vote. Specifically, Youth Movement's executive director, Sayles Kasten, testified that the organization's goals include increasing turnout margins in key college towns, collecting pledges to vote from young people so that it "can effectively turn them out to the polls," growing its "core volunteer base," mobilizing young voters on election day, including through canvassing, phones, digital media, in-person events, and rides to the polls, and passing progressive legislation supported by young people. Id. at 16:3-11.

To effectuate its goals, Youth Movement runs several "staple programs." Id. at 24:3. These include its pledge-to-vote and get-out-the-vote programs. Youth Movement also runs a digital program that supports these services by providing education about, among other things, how to complete the voting process.

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At bottom, these programs involve trying to ensure that as many eligible young voters as possible cast ballots on election day. In its pledge-to-vote program, Youth Movement engages with young people to encourage them to vote through conversations and "Pledge to Vote cards." Id. at 24:3-5. The program is a critical means for Youth Movement to improve voter registration in the state, as groups like Youth Movement are not permitted to register voters directly. Through its get-out-the-vote program, Youth Movement tries to make sure that eligible voters are able to cast their vote on election day by providing them with information regarding their polling location and giving them rides to the polls.

By eliminating the QVA, HB 1569 has decreased the effectiveness of each of these programs. Prior to HB 1569, these programs relied on the availability of the QVA for new registrants to prove citizenship. An individual who pledged to vote was at no risk of being denied the right to register because he lacked DPOC. Youth Movement could ensure that its get-out-the-vote program was effective because all of the eligible voters it transported to the polls on election day would be able to vote regardless of whether they possessed DPOC. That is no longer the case.

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Youth Movement has spent resources, including money and staff time, to respond to HB 1569. Beginning with the March 2025 elections, local elections in which Youth Movement would not typically heavily invest, Youth Movement spent its resources, including at least eight to 10 hours of staff time, messaging and creating public-facing materials regarding voter registration. Youth Movement has since spent at least 10 to 20 additional hours drafting messaging for its digital program for voters to help them comply with the new requirements to register because effective messaging is "critical to [its] work." Id. at 58:13-59:14.

Youth Movement has also already spent staff time developing a potential "documents chase program," which would be a new program for the organization focused on making sure that the people who pledge to vote actually gather the documents they will need to register. Id. at 55:16-56:1, 64:14-25. It has developed a new program to focus on recruiting effective allies, including college officials and city and town officials, to help ensure that more programs are being offered to help students register to vote.

Youth Movement has also expended significant staff time and other resources developing changes to its core programs in response to HB 1569 ahead of the 2026 mid-term election. With respect to its get-out-the-vote program, for example, Youth Movement is adding an "intake process to make sure that [it does not] accidentally send someone to the polls and waste their time without the documents they need or, conversely, turn away someone who would be able to vote should they have gone." Id. at 63:21-64:10. Youth Movement has already spent approximately 40 to 50 hours of staff time developing and drafting changes to the program, and it continues to expend staff time preparing and refining new materials and trainings that it will conduct for its members and volunteers who carry out the program.

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While Youth Movement did not focus on voter registration events in the past given its reliance on pledges to vote, it will now dedicate either one-half or one-third of a staff member's time exclusively to making sure more students are able to register in advance at registration events. Youth Movement will support these voter registration events in several locations throughout the state and send staff members or volunteers to assist with the events.

B. Open Democracy

Open Democracy is a voting rights organization whose mission is "political equality for all." Doc. no. 143, Trial Tr. at 10:10-11. To accomplish this mission, Open Democracy engages in several core activities, including, but not limited to, "campaign finance research, training, [and] advocacy"; implementation of a "high school voter registration program"; "poll observer[] and poll worker recruitment"; and "general voter education." Id. at 10:20-11:10. Open Democracy operates throughout the State of New Hampshire, conducting voter registration activities and recruiting poll observers across the state.

1. Injury from the elimination of the QVA

Through its high school voter registration program, Open Democracy seeks to have "all 18-year-olds in the state of New Hampshire . . . register to vote," regardless of their party affiliation. Id. at 11:14-16. To facilitate voter registration for 18-year-olds, Open Democracy began hosting high school registration drives in 2022 and hired a high school voter registration coordinator, Samuel Cassin.

In order to help high schools promote and run registration drives, Open Democracy created a "tool kit," which contains a "whole host of resources" such as "sample letters to parents, sample letters to the supervisor of the checklist or town clerk," and promotional materials like "social media posts." Id. at 14:5-18. The tool kit is available on Open Democracy's website.

Ms. Zink, Open Democracy's executive director, testified that, following the enactment of HB 1569, Open Democracy spent resources updating its educational materials, engaging in "an intensive document review and edits" that were not necessary for any prior changes in New

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Hampshire's election laws. Id. at 89:21-90:4. Its staff had to review "every single document in [its] tool kit" and remove "any reference[s] to an affidavit being available." Id. at 15:1-11. Staff also had to update the sample letters to parents, social media posts, and posters. Updating the materials in the tool kit took Open Democracy's staff approximately 52 hours.

Open Democracy also needed to add additional documents to the tool kit and had to "recycle[]" any "printed materials" and "print new materials and new stickers" in response to HB 1569. Id. at 22:6-9. These efforts came at the expense of other priorities.

Despite updates to the toolkit and other efforts, Open Democracy has been able to help fewer high school students register to vote since HB 1569 eliminated the QVA option because students did not possess the necessary DPOC. Fewer students registered in 2025 than in 2023 despite the fact that Open Democracy had a full-time staff member dedicated to high school registration drives in 2025 that it did not have in 2023, and despite the fact that Open Democracy updated the tool kit materials to emphasize the documents needed to register to vote. Indeed, according to Mr. Cassin, "[m]ore students were turned away . . . than actually registered to vote" during Open Democracy's drive at Manchester High School Central in 2025. Doc. no. 154, Trial Tr. at 60:2-8. That is especially notable because Open Democracy helped at least 650 high school students register in 2024, and Mr. Cassin did not recall seeing any applicants turned away. That is likely because "the vast majority" of students used a QVA to prove their citizenship when registering to vote during the registration drives held in 2024. Id. at 57:15-19.

Open Democracy also expanded its poll observer program to cover municipal elections in addition to general elections and updated the materials it uses in connection with poll observer trainings following HB 1569's elimination of the QVA. To do so, Open Democracy had to divert

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resources that otherwise would have been spent on other of its core activities, such as campaign finance research.

2. Injury from the elimination of the CVA

Open Democracy's efforts regarding its poll observer program also stemmed from HB 1569's elimination of the CVA. It has updated its poll observer training deck to account for the CVA's removal with new instructions on how to handle voter challenges and deploys poll workers at municipal elections as mentioned above to watch out for potential challenges. Again, these efforts came at the expense of other core activities.

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C. League of Women Voters-NH

The League of Women Voters is a member, voting rights organization. The League of Women Voters-NH is the state league for New Hampshire, and it carries out its mission throughout the state. That mission is to "empower voters and to defend democracy," which it effectuates by educating voters regarding how they can participate in the representative-democracy process. Doc. no. 152, Trial Tr. at 12:7-19.

The League of Women Voters-NH's core programs to achieve its organizational mission include engaging in activities to inform prospective voters. Among other activities, this involves hosting candidate forums, tabling at community events, and giving presentations to groups that request the League of Women Voters-NH to discuss issues of voting, particularly new election laws. The League of Women Voters-NH also creates informational handouts to inform potential voters, which can be printed and distributed at events.

The organization also publishes information on voting on its website and social media and includes information about registration, upcoming elections, and changes to the law in its regular newsletters and legislative alerts. The League of Women Voters-NH's president, Elizabeth Tentarelli, manages the Facebook page and website for the organization.

Following the passage of HB 1569, the League of Women Voters-NH spent resources to inform potential voters about the registration requirements and the new law. For example, Ms. Tentarelli testified that she significantly increased the League of Women Voters-NH's Facebook activity to address concerns relating to HB 1569 and spent about $440 "boosting" Facebook posts related to the bill in 2025. Id. at 16:11-17:21. The League of Women Voters-NH has given numerous presentations to groups over the past year about HB 1569's changes to New Hampshire's voting requirements, and the number of these presentations exceeds the typical number of talks that League of Women Voters-NH gives each year regarding elections generally. Following the enactment of HB 1569, the League of Women Voters-NH had to update its tabling materials to explain to potential voters how to prove their citizenship when registering to vote in light of the elimination of the QVA.

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Further, HB 1569 has forced the League of Women Voters-NH to redirect time towards trying to explain the intricacies of the law rather than towards empowering voters to participate in the democratic process. Audience members at presentations, Facebook commentators to which the League of Women Voters-NH must respond, and potential voters have expressed concern about HB 1569's elimination of the QVA and confusion about what may constitute "other reasonable documentation" to prove citizenship. In short, HB 1569 makes the League of Women Voters-NH's efforts to fulfill its organizational mission less effective.

D. The Forward Foundation

The Forward Foundation is a nonpartisan organization founded in 2022 that aims "to get more working-aged people to be civically engaged in New Hampshire." Doc. no. 156, Trial Tr. at 25:1-3. The Forward Foundation "primarily focus[es] on engaging people who are under the age of 50 in New Hampshire" along with other people "less represented in our democracy" such as those with "diverse lived experiences, people who have recently moved here, [and] people who might have English as their second language." Id. at 25:23-26:9. The organization carries out its mission throughout New Hampshire, including by conducting voter registration and education activities and recruiting poll workers across the state. Its core programs to achieve its mission include programs focused on voter education, governance, and legislative reform.

Julianne Gadoury is the executive director of the Forward Foundation. She testified regarding the effect that HB 1569 has had on the organization. HB 1569 required the Forward Foundation to alter its mailers significantly. The Forward Foundation changed the goal of its mailers and the populations it targeted, shifting from targeting low-propensity voters to unregistered voters, and making the mailers more detailed and complicated to ensure that people were aware of the documents required to register. The organization had to change its vendor for sending out these mailers after HB 1569 to one that was more familiar with voter education and better able to target unregistered voters. Refining the mailers drained staff time and energy, particularly because there is no clear guidance from the Secretary's office on required documentation, including "other reasonable documentation." After HB 1569, the Forward Foundation has also added "multiple text chases" to its previous efforts in order to reinforce the new registration information. Id. at 54:21-55:6. Many of its text and mailer campaigns are handled by an outside vendor that the Forward Foundation pays.

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HB 1569 has forced the Forward Foundation to "reallocate[] [its] resources" and has impacted its "ability to [] carry out different aspects of [its] program and mission." Id. at 39:4-11. This has included "spend[ing] a lot more staff time and resources dedicated to voter education and voting rights" as a result of HB 1569. Id. Specifically, the Forward Foundation had one staff member working on voter education before HB 1569, including through its partnership with the NHCVR. Now, the Forward Foundation has dedicated four staff members of its eight-person staff to voter education and voting rights. The Forward Foundation's budget for voter education in 2024 was $84,000; it ultimately spent over $131,000 in preparation for and in response to HB 1569's enactment. This shift has forced the organization to scale back on its governance work and legislative reform program.

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E. The Muirheads

Both Alexander Muirhead and Lila Muirhead were born in 2008 in Austin, Texas and are currently 17 years old. Both Alexander and Lila will turn 18 in 2026, months before the state primary and election. They live in Hanover, New Hampshire with their mother and father (next friend, Russell Muirhead).

Alexander plans to register to vote in person in New Hampshire when he turns 18, but he has not thought about where he will register. He does not presently have a plan to register to vote, but he expects to make a plan when he turns 18.

Lila plans to register to vote primarily to enable her to vote in the federal elections. She plans to register in Hanover in "late spring or early summer," before the fall national election in 2026. Doc. no. 132, ¶ 39.

F. Miles Borne

Miles Borne was born in 2007 in Portsmouth, New Hampshire. He graduated from high school on June 6, 2025, and now attends Middlebury College in Vermont. He lives at his parents' house in Rye, New Hampshire.

Borne currently possesses both a U.S. passport and a birth certificate. He registered to vote in 2025, on the day of his 18th birthday. Although Borne testified that he does not know what the future will hold, he plans to vote in future elections, including by absentee ballot in the November 2026 election in New Hampshire.

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Rulings of Law

I. The Plaintiffs Have Standing To Assert Their Claims

The defendants have challenged the plaintiffs' standing to assert their claims in both cases at every stage of the respective litigations. The court has addressed in detail and rejected those challenges to the remaining plaintiffs' claims at each turn.[17] See Coal. for Open Democracy, 794 F. Supp. 3d 28 (granting in part and denying in part the defendants' motion to dismiss based on standing); New Hampshire Youth Movement v. Scanlan, No. 24-CV-291-SE, 2025 WL 2336868 (D.N.H. Aug. 13, 2025) (denying motion to dismiss); New Hampshire Youth Movement v. Scanlan, No. 24-CV-291-SE, 2026 WL 323171 (D.N.H. Feb. 6, 2026) (denying motion for summary judgment). Although the defendants declined to address the plaintiffs' standing in their post-trial briefing, the court briefly discusses the issue here.

[17] The court previously held that certain plaintiffs did not have standing to pursue their claims and dismissed them from the case. See Coal. for Open Democracy v. Scanlan, 794 F. Supp. 3d 28, 44-47 (D.N.H. 2025).

"Standing doctrine assures respect for the Constitution's limitation of '[t]he judicial Power' to 'Cases' and 'Controversies.'" Hochendoner v. Genzyme Corp., 823 F.3d 724, 731 (1st Cir. 2016) (quoting U.S. Const. art. III, § 2, cl. 1). "For there to be a case or controversy under Article III, the [plaintiffs] must have a 'personal stake' in the case—in other words, standing." Town of Milton v. Fed. Aviation Admin., 87 F.4th 91, 95 (1st Cir. 2023) (quoting TransUnion LLC v. Ramirez, 594 U.S. 413, 423 (2021) (further quotations omitted)).

"[T]o establish standing, a plaintiff must show (i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief." TransUnion, 594 U.S. at 423. A showing "of future injury may suffice if the threatened injury is 'certainly impending,' or [if] there is a 'substantial risk' that the harm will occur." Reddy v. Foster, 845 F.3d 493, 500 (1st Cir. 2017) (quoting Susan B. Anthony List v. Driehaus, 573 U.S. 149, 158 (2014) (further quotations omitted)); see Clapper v. Amnesty Int'l USA, 568 U.S. 398, 409, 414 n.5 (2013). "Plaintiffs 'must demonstrate standing for each claim that they press and for each form of relief that they seek.'" Webb v. Injured Workers Pharmacy, LLC, 72 F.4th 365, 372 (1st Cir. 2023) (quoting TransUnion LLC, 594 U.S. at 431).

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A. Organizational Plaintiffs

"When an organization . . . seeks to establish Article III standing, it may proceed in one of two ways: it may show that it has 'organizational standing' to sue on its own behalf, or it may demonstrate that it has 'associational standing' to sue on behalf of its members." Mayor & City Council of Baltimore v. Bureau of Alcohol, Tobacco, Firearms & Explosives, 738 F. Supp. 3d 1,

7 (D.D.C. 2024); see Equal Means Equal v. Ferriero, 3 F.4th 24, 29 (1st Cir. 2021). Here, each of the Organizational Plaintiffs has organizational standing, and the court therefore begins there.

As the court explained in its earlier orders, the Organizational Plaintiffs' theory of standing is derived largely from Havens Realty Corporation v. Coleman, 455 U.S. 363 (1982) and clarified by Food & Drug Administration v. Alliance for Hippocratic Medicine, 602 U.S. 367 (2024). In Havens Realty, the defendant (Havens) allegedly engaged in a practice called racial steering, giving prospective home renters and buyers false information to direct them toward housing near others of the same race and away from housing near individuals of other races, thereby maintaining racial housing segregation. 455 U.S. at 366 & n.1. Several plaintiffs, including a housing organization called HOME, which provided housing counseling and referral services to prospective buyers and renters, sued Havens, alleging a violation of the Fair Housing Act. Id. at 367.

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The Supreme Court held that HOME had organizational standing to pursue its claim because the complaint alleged that Havens's "steering practices . . . perceptibly impaired HOME's ability to provide counseling and referral services for low- and moderate-income homeseekers." Id. at 379. The Supreme Court stated that "[s]uch concrete and demonstrable injury to the organization's activities—with the consequent drain on the organization's resources—constitutes far more than simply a setback to the organization's abstract social interests." Id.

Recently, the Supreme Court clarified Havens Realty's holding. In Alliance for Hippocratic Medicine, several anti-abortion medical organizations sought to challenge a Food and Drug Administration action that eased regulations related to mifepristone, a drug used to terminate pregnancies. 602 U.S. at 376-77. The organizations relied on a Havens Realty theory to

establish standing, alleging that the FDA had "impaired their ability to provide services and achieve their organizational mission" and that they had to "divert[] [their] resources in response to" the FDA's actions. Id. at 394-95 (quotations omitted). The Supreme Court rejected this argument, re-affirming that mere issue advocacy, even when accompanied by expenditures, could not alone establish standing. Id. at 395. Distinguishing Havens Realty, the Court highlighted that HOME "not only was an issue-advocacy organization, but also operated a housing counseling service." Id. So, "when Havens gave . . . false information about apartment availability," it "directly affected and interfered with HOME's core business activities" because it "impaired HOME's ability to provide counseling and referral services . . . ." Id. The Supreme Court noted that the plaintiffs in Alliance for Hippocratic Medicine did not allege that the FDA's action "imposed any similar impediment to the [plaintiffs'] advocacy business" and, therefore, they lacked standing. Id.

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1. Open Democracy

As does each plaintiff, Open Democracy asserts Count I, which alleges that HB 1569's elimination of the QVA to prove citizenship constitutes an unjustifiable burden on the right to vote. Unlike the other plaintiffs, Open Democracy also asserts Counts II and III, which allege that HB 1569's elimination of the CVA constitutes an unjustifiable burden on the right to vote (Count II) and violates voters' procedural due process rights (Count III). Open Democracy has organizational standing to assert all three counts.

HB 1569's eliminations of the QVA and CVA perceptibly impair Open Democracy's ability to provide its core services and cause it to suffer an injury. The organization spent money and devoted staff time to updating and creating new materials to help high schools promote and

run their registration drives to account for HB 1569's elimination of the QVA. Since HB 1569 eliminated the QVA option to prove citizenship, Open Democracy has been able to help fewer high school students register to vote, because students did not possess the necessary DPOC. Further, Open Democracy has needed to expand its poll observer program and update its materials related to the program after HB 1569's enactment to account for both the elimination of the QVA and the CVA. These changes have forced Open Democracy to divert resources that it would otherwise have spent on its other core activities, such as campaign finance research, to address the consequences of HB 1569. Therefore, Open Democracy has suffered a legally cognizable injury from HB 1569's eliminations of the QVA and CVA. See League of United Latin Am. Citizens v. Exec. Off. of President, 808 F. Supp. 3d 29, 57-58 (D.D.C. 2025) (LULAC II) (holding that nonpartisan, not-for-profit voting rights organizations had organizational standing to challenge an executive order's DPOC requirement where it "require[ed] the organizations to either update or replace" online tools that helped people register to vote, "force the [plaintiffs] to update educational information that they provide to prospective voters," and "invest additional resources in training their staff and volunteers"); Get Loud Ark. v. Thurston, 748 F. Supp. 3d 630, 653-54 (W.D. Ark. 2024) (plaintiff that provided voter registration services had standing to challenge Election Commission rule changing signature requirement because the rule "'perceptibly impaired' [the plaintiff's] ability to provide voter registration services to Arkansans, as evidenced by the precipitous decline in registrations through [the plaintiff] since the Rule was put into place"); see also Republican Nat'l Comm. v. North Carolina State Bd. of Elections, 120 F.4th 390, 397 (4th Cir. 2024) (state action that inhibited committee's ability to "counsel voters to support Republican candidates" caused injury sufficient to confer standing because it affected and interfered with organizational mission); League of United Latin Am.

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Citizens v. Exec. Off. of the President, 780 F. Supp. 3d 135, 188 (D.D.C. 2025) (LULAC); see generally E.Q. v. United States Dep't of Homeland Sec., No. 25-CV-791 (CRC), 2026 WL 946181, at *13 (D.D.C. Apr. 8, 2026).

Further, there can be no dispute that Open Democracy's injuries were caused by HB 1569's eliminations of the QVA and CVA. Moreover, the injuries that Open Democracy has suffered and will continue to suffer would be redressed by the court's declaration that the provisions of HB 1569 that eliminated the QVA and the CVA violate the United States Constitution and an injunction prohibiting the defendants from implementing or enforcing those provisions.[18] Therefore, Open Democracy has organizational standing to pursue Counts I-III.

Where, as here, "coplaintiffs have a shared stake in the litigation—close identity of interests and a joint objective—the finding that one has standing to sue renders it superfluous to adjudicate the other plaintiffs' standing." Montalvo-Huertas v. Rivera-Cruz, 885 F.2d 971, 976 (1st Cir. 1989) (citing Watt v. Energy Action Educ. Found., 454 U.S. 151, 160 (1981)) (further citation omitted)). However, the court analyzes Youth Movement's standing to pursue its claim because Youth Movement and Open Democracy are plaintiffs in separate cases. And the court briefly explains its conclusion that the remaining Open Democracy Plaintiffs have standing to pursue Count I for the sake of completeness.

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[18] The defendants argued in their summary judgment motion that none of the plaintiffs can meet the redressability prong of the standing analysis because they do not seek prospective relief. Rather, the defendants contended, the plaintiffs seek to reinstate a repealed statute and revive a statutory scheme that they contend is no longer in force. To the extent that the defendants intended to continue to pursue that argument, the court rejects it for the reasons discussed in its order denying the defendants' summary judgment motion. See New Hampshire Youth Movement, 2026 WL 323171, at *7.

2. Youth Movement

Youth Movement brings only Count I, which alleges that HB 1569's elimination of the QVA to prove citizenship constitutes an unjustifiable burden on the right to vote. Therefore, the court considers Youth Movement's standing as it pertains to the elimination of the QVA for citizenship purposes.

The record establishes that HB 1569's elimination of the QVA perceptibly impairs Youth Movement's mission-critical programs, including its pledge-to-vote and get-out-the-vote programs. The pledge-to-vote program is impaired by the elimination of the citizenship QVA because the requirement forces Youth Movement to take additional steps that it did not have to take before to ensure that the voters it assists ultimately vote. Youth Movement's get-out-the-vote program is also impaired by the elimination of the QVA because some of the voters Youth Movement has assisted in the past, absent intervention, would be unable to vote. Youth Movement has been forced to augment its programs since HB 1569's passage, including by changing its materials and messaging, and adding new processes and programs. The organization has been required to devote staff time toward these efforts, and will continue to do so in the future, particularly by sending additional staff members to voter registration events, which had not been as much of a focus for Youth Movement in the past because the QVA made it relatively likely that qualified voters would be able to register. These harms satisfy the injury component of standing. See, e.g., LULAC II, 808 F. Supp. 3d at 57-58; LULAC, 780 F. Supp. 3d at 188. Youth Movement has suffered a legally cognizable injury from HB 1569's elimination of the QVA.

Because the analysis is similar to the court's analysis of Open Democracy's standing, the causation and redressability prongs as they apply to Youth Movement's claim require little discussion. There is a clear causal nexus between Youth Movement's injuries and HB 1569's

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elimination of the QVA. And the court has already addressed and rejected the defendants' arguments regarding redressability.

For these reasons, the evidence in the record is sufficient to support all three prongs of the standing analysis with regard to Youth Movement. It has organizational standing to pursue Count I.[19]

3. Remaining Organizational Plaintiffs

The League of Women Voters-NH spent time and money creating and expanding the reach of social media posts relating to HB 1569's elimination of the QVA and creating new educational materials. The organization did several presentations to various groups regarding HB 1569's changes to New Hampshire's election law. Further, the League of Women Voters-NH is now unable to explain adequately to voters how they can register to vote if they lack DPOC because it is not aware of an acceptable definition of "other reasonable documentation."

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The Forward Foundation has been forced to update its mailers to address HB 1569's changes to the proof-of-citizenship requirements and spent money expanding its text and mailer campaigns. It has also reallocated its resources, such as staff time, to work on registration education at the expense of its other activities.

These impacts on the League of Women Voters-NH and the Forward Foundation demonstrate that both organizations have suffered legally cognizable injuries from HB 1569's elimination of the QVA. And, for the reasons discussed above, both organizations can satisfy the

[19] Because the court concludes that Youth Movement has organizational standing to pursue Count I, it does not address Youth Movement's argument in its post-trial briefing that it also has associational standing to pursue its claim.

causation and redressability prongs of the standing analysis. Therefore, the League of Women Voters-NH and the Forward Foundation have standing to pursue Count I.

B. The Individual Plaintiffs

The only relevant inquiry in the standing analysis with regard to the Individual Plaintiffs is whether they have suffered or will suffer a cognizable injury from HB 1569's elimination of the QVA. For the reasons discussed concerning the Organizational Plaintiffs, any injury meets the causation and redressability requirements.

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1. The Muirheads

As mentioned, Alexander and Lila are minor citizens who live in New Hampshire. They will each turn 18 before the end of 2026 and intend to register to vote as soon as they are eligible. Because the Muirheads' claim is based on a future injury, the relevant question is whether they have a threatened injury that is certainly impending or there is a substantial risk that the harm will occur. Reddy, 845 F.3d at 500.

Prior to HB 1569, the Muirheads would have been able to register to vote by submitting a QVA to prove their citizenship. Now, they are required to produce DPOC. The requirement that the Muirheads must produce documentary evidence to register to vote itself constitutes an injury sufficient to confer standing. See Fish v. Schwab, 957 F.3d 1105, 1120 (10th Cir. 2020); Common Cause/Georgia v. Billups, 554 F.3d 1340, 1351-52 (11th Cir. 2009). Because the Muirheads will register to vote when they are able, their injury from the implementation of HB 1569 is "certainly impending."

2. Miles Borne

When the Open Democracy Plaintiffs filed their complaint, Borne was a minor citizen who lived in New Hampshire. At the time of trial, Borne has turned 18, registered to vote in 2025 using DPOC, and plans to vote in the November 2026 election in New Hampshire by absentee ballot.

The standing inquiry is "focused on whether the party invoking jurisdiction had the requisite stake in the outcome when the suit was filed." Davis v. Fed. Election Comm'n, 554 U.S. 724, 734 (2008). At the time the Open Democracy Plaintiffs filed their complaint, like the Muirheads, Borne was a minor citizen who lived in New Hampshire and who intended to register to vote when he turned 18. The requirement that he produce DPOC to register to vote is a sufficient injury to confer standing.

Although mootness is a concept distinct from standing, Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc., 528 U.S. 167, 189 (2000), the court briefly addresses here the defendants' argument in their post-trial brief that Borne's claim is moot because he has already registered to vote using DPOC and plans to vote in New Hampshire by absentee ballot in the November 2026 election. As the defendants acknowledge, there is an "established exception to mootness for disputes capable of repetition, yet evading review," which is routinely "appropriate" "in the context of election cases." FEC v. Wisconsin Right To Life, Inc., 551 U.S. 449, 462–63 (2007) (quoting Storer v. Brown, 415 U.S. 724, 737 n.8 (1974)); Lawrence v. Blackwell, 430 F.3d 368, 371 (6th Cir. 2005) ("Challenges to election laws are one of the quintessential categories of cases which usually" are disputes "capable of repetition, yet evading review."). "The Supreme Court has placed on the party asserting that a case is not moot the burden of showing '(1) the challenged action is in its duration too short to be fully litigated prior

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to cessation or expiration; and (2) there is a reasonable expectation or a demonstrated probability that the same complaining party will be subject to the same action again.'" Libertarian Party of New Hampshire v. Gardner, 638 F.3d 6, 12 (1st Cir. 2011) (quoting FEC, 551 U.S. at 462).

The Open Democracy Plaintiffs have met their burden with respect to Borne. With regard to the first prong, "the time frame presented by electoral disputes rarely allows for resolution through litigation." La Botz v. Fed. Election Comm'n, 889 F. Supp. 2d 51, 59 (D.D.C. 2012) (noting that "[e]lectoral disputes are . . . 'paradigmatic' examples of cases that cannot be fully litigated before the particular controversy expires" (quoting Moore v. Hosemann, 591 F.3d 741, 744 (5th Cir. 2009))); see also Merle v. United States, 351 F.3d 92, 95 (3d Cir. 2003). The defendants do not meaningfully dispute that the Open Democracy Plaintiffs have met their burden with regard to the first prong in light of the nature of this case.

The defendants instead focus on the second prong, arguing that there is no evidence that Borne could be subject to HB 1569's provisions in the future because he has already registered to vote. Even if the court could infer that Borne would remain living with his parents or eventually become domiciled on his own in Rye, New Hampshire and thus not need to re-register to vote, the Open Democracy Plaintiffs have still carried their burden with regard to the second prong. The second prong of the mootness analysis is "somewhat relaxed in election cases." Lawrence, 430 F.3d at 372. "In the electoral context, many courts have concluded that a plaintiff need only show that *others similarly situated* might suffer a comparable harm in the future." La Botz, 889 F.2d at 59 (citing cases). Indeed, courts "have applied the capable of repetition yet evading review exception to hear challenges to election laws even when the nature of the law made it clear that the plaintiff would not suffer the same harm in the future." Lawrence, 430 F.3d at 372 (citing cases). Here, even if the court could conclude that Borne himself would not again suffer

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the same harm —and, given that Borne is just 18 years old, lives with his parents, and does not know what his future holds, that conclusion is dubious—Borne's claim in Count I would not be moot given the nature of the dispute.

II. Unjustifiable Burden On The Right To Vote

The right to vote is "'a fundamental political right, . . . preservative of all rights.'" Dunn v. Blumstein, 405 U.S. 330, 336 (1972) (quoting Reynolds v. Sims, 377 U.S. 533, 562 (1964)); see also Evans v. Cornman, 398 U.S. 419, 422 (1970) ("[T]he right to vote ... is protective of all fundamental rights and privileges."). "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which . . . we must live." Wesberry v. Sanders, 376 U.S. 1, 17 (1964). Yet, "the Constitution grants to the States a broad power to prescribe the 'Times, Places and Manner of holding Elections for Senators and Representatives,' which power is matched by state control over the election process for state offices." Tashjian v. Republican Party of Connecticut, 479 U.S. 208, 217 (1986) (quoting U.S. Const. art. I, § 4, cl. 1). The resulting state regulations will "invariably impose some burden upon individual voters." Burdick v. Takushi, 504 U.S. 428, 433 (1992). Accordingly, the "First and Fourteenth Amendments prohibit states from placing burdens on citizens' rights to vote that are not reasonably justified by states' important regulatory interests." Common Cause R.I. v. Gorbea, 970 F.3d 11, 14 (1st Cir. 2020) (per curiam) (quotations omitted) (quoting Anderson v. Celebrezze, 460 U.S. 780, 788-89 (1983) and citing Burdick, 504 U.S. at 430).

The parties agree that Counts I and II, the plaintiffs' challenge to HB 1569's elimination of the QVA to prove citizenship and Open Democracy's challenge to HB 1569's elimination of the CVA to overcome a voter challenge, are governed by the so-called Anderson-Burdick

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framework. Anderson-Burdick requires the court to "weigh the 'character and magnitude of the asserted injury to' the voters' rights against the 'precise interests put forward by the State as justifications for the burden imposed.'" Gorbea, 970 F.3d at 14 (quoting Anderson, 460 U.S. at 789). The court must examine the burden of the challenged provisions in the context of New Hampshire's election laws as a whole and not in isolation. See Burdick, 504 U.S. at 434-37 (considering the burdens imposed by Hawaii's entire electoral scheme rather than those imposed by isolated sections of the code); see also Wood v. Meadows, 207 F.3d 708, 711 (4th Cir. 2000) ("When determining whether a given state's filing deadline unconstitutionally burdens candidates' and voters' rights, a court must examine that state's ballot access scheme in its entirety."); Luft v. Evers, 963 F.3d 665, 671–72 (7th Cir. 2020) ("Courts weigh these burdens against the state's interests by looking at the whole electoral system.").

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It is a "flexible standard." Burdick, 504 U.S. at 434. The "rigorousness" of a court's "inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights." Id. "There is no 'litmus test' to separate valid from invalid voting regulations . . . ." Obama for Am. v. Husted, 697 F.3d 423, 429 (6th Cir. 2012) (quoting Crawford v. Marion Cnty. Election Bd., 553 U.S. 181, 190 (2008) (plurality opinion)). Rather, "the scrutiny [courts] apply will wax and wane with the severity of the burden imposed on the right to vote . . .; heavier burdens will require closer scrutiny, lighter burdens will be approved more easily." Fish, 957 F.3d at 1124; see Burdick, 504 U.S. at 434.

The court must determine whether the burden imposed by HB 1569 is "severe" or something less than severe. Burdick, 504 U.S. at 434. To determine the burden, the court must consider both the statute's broad application to all voters and its heavier burden on subsets of voters. Fish, 957 F.3d at 1126–27; Crawford, 553 U.S. at 198–99. After determining the burden,

the court must "identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule." Anderson, 460 U.S. at 789. Restrictions that impose a "severe" burden on the right to vote are subject to "strict scrutiny," and survive only if the defendants prove that they are "'narrowly drawn to advance a state interest of compelling importance.'" Burdick, 504 U.S. at 433–34 (quoting Norman v. Reed, 502 U.S. 279, 289 (1992)); see also McClure v. Galvin, 386 F.3d 36, 41 (1st Cir. 2004) (same). Typically, "severe" burdens are "invidiously" discriminatory on the basis that they are "irrelevant to the voter's qualifications." Crawford, 553 at 189 (citing Harper v. Va. Bd. of Elections, 383 U.S. 663, 666–67 (1966)). Alternatively, "'evenhanded restrictions that protect the integrity and reliability of the electoral process itself' are not [invidious]." Id. at 189-90 (quoting Anderson, 460 U.S. at 788 n.9). But evenhanded restrictions imposing "slight" burdens must still "be justified by relevant and legitimate state interests 'sufficiently weighty to justify the limitation.'" Crawford, 553 U.S. at 191 (quoting Norman, 502 U.S. at 288–89). In making that assessment, the court must consider "the extent to which [state] interests make it necessary to burden the plaintiff[s'] rights."[20] Anderson, 460 U.S. at 789.

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[20] The defendants' request for rulings of law (doc. 169) references the standard applicable to facial challenges and asks the court in conclusory fashion to find that the plaintiffs have failed to satisfy it here. The court necessarily agrees that a "facial challenge must fail where the statute has a plainly legitimate sweep." Crawford, 533 U.S. at 202. To the extent that the defendants' unsupported request requires a response, the court concludes that HB 1569's eliminations of the QVA and CVA do not have a "plainly legitimate sweep" even when the court considers only their "broad application to all [New Hampshire] voters." See id. This is especially so because, even under the most exacting standard for facial challenges, which requires the plaintiffs to establish that the eliminations of the QVA and CVA are "unconstitutional in all of [their] applications," the "proper focus of the constitutional inquiry is the group for whom the law is a restriction, not the group for whom the law is irrelevant." City of L.A. v. Patel, 576 U.S. 409, 418 (2015) (quoting Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833, 894 (1992)).

A. HB 1569's Elimination of the QVA to Prove Citizenship is Unconstitutional

By eliminating the QVA to prove citizenship, HB 1569 will significantly burden New Hampshire voters. It already prevented eligible voters from casting ballots in the 2025 municipal and local elections, in part because New Hampshire voters do not have ready access to DPOC and New Hampshire exceedingly relies on election day registration while prohibiting provisional balloting. The number of voters who are unable to vote without the safety valve of the QVA to prove citizenship will grow exponentially in future federal and state general and primary elections when turnout is much higher. HB 1569's elimination of the QVA to prove citizenship will have a particularly detrimental impact on young residents and married women. And although HB 464 will help certain voters register even though they do not possess DPOC, its effect will not meaningfully mitigate the significant burden HB 1569 places on voters. New Hampshire's asserted interests in eliminating the QVA do not justify the resulting burdens.

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1. Burden on the right to vote from elimination of citizenship QVA

Between April 29, 2024, and November 10, 2024—the day before HB 1569 took effect—14,737 registrants relied on QVAs to prove their citizenship. That was more than 10% of all registrants in that period. In addition, approximately 16.8% of first-time registrants used QVAs to prove citizenship during that timeframe. More than 10,000 of the 14,737 citizenship QVAs were signed as part of election day registration on the day of the November 2024 general election.

Young people aged 17 to 24 relied on QVAs to prove citizenship at higher rates than other groups. More than 1,000 voters signed QVAs to prove citizenship to register on the day of

the November 2024 general election in the town of Durham alone, which is New Hampshire's largest college town.

The defendants' proposed findings of fact and rulings of law take pains to describe these voters as simply "choos[ing] to prove . . . citizenship by executing a [QVA]." Doc. no. 169 at 6; see id. at 14 (arguing that the court should not give any weight to the inference that "registrant[s] ***relied*** on a QVA rather than simply ***preferred*** a QVA"). In other words, the defendants attempt to paint a picture of a voting population that possesses but consciously chooses to forego bringing DPOC with them to register on election day and opts instead to submit a QVA to prove citizenship for the sake of convenience. It is true that the court cannot and does not conclude that every voter who used a QVA to establish citizenship could not otherwise have established citizenship with DPOC. But even with that limitation, the significant number of voters who relied on QVAs to prove citizenship between April 29, 2024, and November 10, 2024, corroborates other testimony, such as Dr. Herron's opinion that many New Hampshire voters do not have access to DPOC. See Fish, 957 F.3d at 1130-31. And, viewing the evidence as a whole, the court can draw the reasonable inference that a significant portion of the people who established citizenship by using a QVA (16.8% of first-time registrants) did so not because they preferred to do so, but because they fell into the group of people who did not possess or could not easily retrieve DPOC.

For many New Hampshire voters, it is difficult or time-consuming to access their citizenship documents. As Dr. Herron testified, even of those eligible New Hampshire voters who do possess some form of DPOC, between 89,934 and 153,213 cannot retrieve their documents within one day. Some, for example, are students domiciled in New Hampshire and their documentation is stored in their parents' homes, rather than with the students at school.

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Some voters keep their citizenship documents in a safe, to which they may not personally have ready access.

Other voters have misplaced their proof-of-citizenship-documents—they believe they have them somewhere but do not know where. Dr. Herron estimated that between 17,967 and 53,826 eligible New Hampshire voters fall into this category, believing that they have citizenship documents but that they could not retrieve them even if allowed multiple days to do so.

Finally, some eligible voters do not possess citizenship documents at all. Dr. Herron testified that between 5,433 and 31,291 eligible New Hampshire voters do not possess acceptable DPOC—a conservative estimate that assumes that voters who do not know whether they possess acceptable documents do in fact possess them. The estimate rises as far as 59,583 if Dr. Herron assumes that voters who do not know whether they have the required documents do not possess them. The defendants argue that this evidence is of limited value because it establishes only how many voters do not possess DPOC and not how many voters cannot obtain DPOC before the next election. The court finds Dr. Herron's testimony is useful in weighing the burden imposed by HB 1569. This is especially so in the context of the other evidence showing that many voters who arrive at the polls to register on election day are not aware of the registration requirements. It is not necessary for the plaintiffs to show that voters would not be able to present DPOC under any circumstances.

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Even voters who possess and have access to DPOC often do not carry it with them. Few voters—only approximately 11% of eligible voters in New Hampshire who possess a passport and approximately 7% of eligible voters in New Hampshire who possess a birth certificate—carry those documents with them regularly. Even would-be voters who possess the documents they need therefore have to go out of their way to bring them or make a second trip to the polls if

they do not bring them to register to vote—the testimony includes multiple examples of voters who possess DPOC, but who have nonetheless shown up to register without it since HB 1569's enactment.

The burden of providing DPOC to register is more obviously significant for those who do not possess or have ready access to it. But the burden on all voters, including those who possess DPOC, is heightened when looking at New Hampshire's voting scheme as a whole, as the court must. As discussed above, even prior to the enactment of HB 1569, New Hampshire had one of the highest "costs of voting" in the country. It did not permit early, in-person voting, registration by mail or online except in special circumstances, provisional balloting, automatic voter registration, third-party registration, or third-party voter registration drives. On the sole basis of its history of offering election day registration, New Hampshire escapes many of the obligations imposed upon states through federal legislation intended to increase voter registration and access to the polls. See 52 U.S.C. § 20501(b) (stating that the purposes of the NVRA include "establish[ing] procedures that will increase the number of eligible citizens who register to vote in elections for Federal office" and "ensur[ing] that accurate and current voter registration rolls are maintained"); Common Cause Georgia v. Kemp, 347 F. Supp. 3d 1270, 1292 (N.D. Ga. 2018) ("Congress sought to protect the right to vote by adopting the provisional voting section of HAVA."). New Hampshire is exempt from the provisions of the NVRA and HAVA that require states to provide opportunities to register to vote at the Division of Motor Vehicles and certain public assistance offices, register to vote by mail, and submit provisional ballots even if voters' names do not appear on the voting lists or an election official asserts that they are ineligible to vote.

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The effect of New Hampshire's exemptions from these requirements on the basis of its election day registration is two-fold. First, qualified voters are less likely to register prior to election day. Thus, the defendants' arguments that voters can avoid the burden imposed by HB 1569 by registering prior to election day falls flat in a state designed to rely intensely on election day registration. Second, it is more important that election day registration is readily available and a law that delays registration, even by one day or a few hours, is more likely to deprive qualified voters access to the ballot.

Two-thirds of QVAs submitted to prove citizenship in the months before HB 1569 took effect were signed on election day. Voters who do not have DPOC with them on election day may not have the time or ability to retrieve their documentation and return in time to cast a vote. Because New Hampshire does not offer provisional ballots or provide a "day after" election day on which an eligible voter can register and still vote in that election, there is no "safety valve" to allow voters who arrive at the polls without DPOC to register to vote. Such a "safety valve" might have otherwise lowered the burden on voters. See Fish, 957 F.3d at 1129 ("[U]nlike the Indiana law in Crawford, an eligible Kansas applicant on the suspense or cancellation list does not have the option to fill out a provisional ballot, produce DPOC after the election, and have their ballot counted." (quotations omitted)); cf. Crawford, 553 U.S. at 199 (holding that the "severity of th[e] burden is, of course, mitigated by the fact that, if eligible, voters [impacted by the challenged law] may cast provisional ballots that will ultimately be counted").

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Various municipal and local elections in 2025 demonstrated the burden that HB 1569 places on voters by eliminating the QVA. Although these elections have a much lower turnout than federal and state elections and see far fewer new voters seeking to register, many voters were prevented from registering because of the elimination of the QVA. NHCVR, a voter

advocacy group, identified hundreds of voters turned away during these elections at just a small handful of the polling locations in the state. The group was able to confirm that many were turned away specifically because of HB 1569's elimination of the QVA. Some of the voters turned away were unable or did not return. This testimony was corroborated by the testimony of local election officials—some of whom personally turned away voters during the March 2025 elections due to HB 1569's elimination of the QVA and voters' inability to prove their citizenship. Indeed, Supervisor Shump of Durham, who turned away at least one voter in that election, testified that this was the only time that she has ever had to turn away a voter who claimed to be an eligible citizen because the voter did not bring citizenship documentation to the polls. This evidence of actual harm to voters is powerful proof that HB 1569 imposes a significant burden. See Fish, 957 F.3d at 1127–28; cf. Ayers-Schaffner v. DiStefano, 37 F.3d 726, 728 & n.5 (1st Cir. 1994).

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The burden on voters from the elimination of the QVA is compounded by the effects of election-worker error. Misunderstandings by election workers over what constitutes adequate proof of citizenship are not uncommon. For example, in October 2025, Mr. Kim, a naturalized citizen, was not allowed to register to vote despite presenting a passport, which constitutes DPOC.

The risk of election-worker error after HB 1569 is particularly acute because of missing or conflicting guidance from the Secretary's office on what constitutes "other reasonable documentation" of citizenship. For example, the Secretary's office advised in its initial HB 1569 guidance that Global Entry cards were not acceptable. The Secretary's office acknowledged in this litigation that this guidance was wrong, but also that it still has not corrected this mistake in its communications to local election officials—even as voters continue to register. The

Secretary's office has also failed to provide any standard by which local officials should assess whether a given document constitutes "other reasonable documentation." Even Director Piecuch testified that she would need to seek legal advice if a local official sought her opinion regarding a particular document on election day. Unsurprisingly, given the dearth of guidance, the record is replete with contradictions and uncertainty over what is and is not acceptable proof of citizenship. This risk of election-worker error adds to the burden placed on New Hampshire voters from the elimination of the QVA. See, e.g., Fish, 957 F.3d at 1129 n.7; Ne. Ohio Coal. for Homeless v. Husted, 696 F.3d 580, 591–95 (6th Cir. 2012) (considering burden imposed on the right to vote by "poll-worker error"); Democratic Exec. Comm. of Fla. v. Lee, 915 F.3d 1312, 1319 (11th Cir. 2019) (emphasizing burdens flowing from "problems [that] occur because of the way in which Florida implements the scheme," and "deficiencies [in its] very nature").

Although HB 1569's elimination of the QVA to prove citizenship impacts voters as a whole, it places an especially heavy burden on certain groups of voters. Here, the record establishes that it places a more significant burden on young voters and married women.

Young voters are particularly burdened by the elimination of the citizenship QVA. They are obviously far more likely to be new voters, and thus more likely to be required to produce DPOC to register than are older voters who may have registered before HB 1569 took effect. Further, young voters disproportionately relied on QVAs to prove citizenship before HB 1569 took effect.

Married women are disproportionately burdened because the names on their DPOC often do not exactly match their current names. Because women more often change their names when they marry (more than 80% of women in opposite-sex marriages took their husbands' last names according to a 2023 Pew Research Center Survey), the requirement that a voter's DPOC matches

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her current name affects women more than men at a 15:1 ratio. The record confirms that women have already been turned away from registering for this reason. Laws such as HB 1569 "that 'place[] a particular burden on an identifiable segment' of voters are more likely to raise constitutional concerns." Ariz. Democratic Party v. Hobbs, 18 F.4th 1179, 1190 (9th Cir. 2021) (citing Anderson, 460 U.S. at 792).

2. HB 464 only slightly mitigates the burdens imposed by the elimination of the QVA

The defendants argue that HB 464 and other measures, such as the Division of Vital Records offering free copies of birth certificates for voting purposes, effectively remove any burden HB 1569 imposes on voters by eliminating the QVA. That is not so. Although these measures slightly alleviate the burdens that the elimination of the QVA imposes on voters, they do far too little to change the court's analysis in any meaningful way. First, the court acknowledges that, in some cases, states have remediated burdens imposed by voter identification laws by offering free identification to eligible voters, but in those cases, the state was capable of issuing the necessary identification to all eligible voters. See e.g., Crawford, 533 U.S. at 198. Here, the evidence shows that the state could only possess the necessary documentation, proof of citizenship, for 40% of the population because the other 60% were born outside of New Hampshire. Second, for the same and other reasons, there are large gaps in the databases that HB 464 makes available in the SVRS to confirm voters' citizenship. Third, there are practical problems with the procedures that HB 464 creates to undertake such SVRS confirmations on election day and otherwise.

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As the Secretary's guidance states, HB 464 can only help a subset of registrants—those who were previously registered to vote in New Hampshire, those who were born in New Hampshire, those who provided proof of citizenship when they obtained a New Hampshire driver's license, and those who possess a birth certificate in a different name, where the name change occurred as part of a New Hampshire marriage or divorce. These limitations mean that the procedures that HB 464 implements will not help a large number of voters prove their citizenship.

An SVRS search will not be able to locate birth certificates for the more than 60% of New Hampshire residents who were born outside the state. Analysis of citizenship QVAs from four New Hampshire municipalities in the months before HB 1569 took effect confirms that more than 72% of them—829 out of 1146—were executed by voters born outside of New Hampshire, either in other states or overseas.

Many New Hampshire residents get married or divorced outside the state. For such residents, vital record searches will not be able to confirm a name change that might be needed to match a current name to a document proving citizenship containing a former name. Indeed, HB 464 could not help two of the three Bethlehem women who were unable to register in October 2025 because their current names did not match their birth certificates. They were born and married in Massachusetts.

Similarly, DMV records available pursuant to HB 464 include only New Hampshire drivers' licenses and identification cards. New Hampshire law allows voters to register using out-of-state identification, and many do so—state records show that more than 43,000 active New Hampshire voters used an out-of-state license or identification card to register. Another 118,000 active New Hampshire voters do not have a New Hampshire driver's license or identification

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card number associated with their registration, suggesting that they, too, may lack such identification.

Further, the DMV database will not accurately report the citizenship status of naturalized citizens who applied for a license before they became citizens, unless they have since voluntarily updated their status with the DMV. Yet the Secretary's search instructions wrongly specify that a registrant shown in DMV records as a noncitizen "is **not** a US citizen and **cannot** register to vote," before later qualifying that statement in smaller text on a different page. Ex. VV at 22, 24. As for other voters, the record simply does not reveal how often DMV records might prove citizenship, where that information comes from, or how accurate it is. The record suggests that some of the DMV citizenship data is self-reported by the registrant, and it is unclear whether citizenship can be confirmed under HB 464 based on that self-reported data.

Even for those who would expect their records to be included in the SVRS because they were born and raised in New Hampshire, the searchable records in the SVRS suffer from various gaps. Nearly all pre-1935 birth certificates are unavailable and some from 1949 and 1950 are also missing. Any birth certificate that was issued on a "delayed" basis is missing, as are marriage records from before 1960. Divorce records from before 1979 and those from within the six months prior to the search, when the court may infer a voter will be most likely to have had a recent name change that is not yet reflected on the voter rolls, are also unavailable. Other name change records from family court and probate court are generally excluded from the searchable records.

Many of the voters whose records will be unavailable in a SVRS search will erroneously believe that a search will be able to confirm their citizenship. Some will unknowingly have a New Hampshire record that falls into one of the gaps outlined above. Others will expect the HB

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464 searches to be more comprehensive than they are, such as wrongfully assuming that the SVRS will have access to out-of-state records. These eligible voters will not be able to rely on HB 464 or the QVA to prove their citizenship and enable them to cast a ballot.

Even ignoring the fact that SVRS searches pursuant to HB 464 would not help a large swath of those seeking to register, there are several other reasons why HB 464 will not meaningfully lessen the burden on New Hampshire voters. For example, SVRS access requires a computing device and internet access, which many New Hampshire polling places do not possess. The survey of polling places conducted by the Secretary's office found that 10.75% of polling places do not have internet, and around 5% are not sure. The survey also found that around 15% of polling places do not have good cellular service, and around 7.5% are not sure. At least 4 polling places have no telephone or internet access. And state offices are not required to, and do not, provide election workers with laptops to access the SVRS on election day.

Also, only a small number of election officials at each polling location have access to the SVRS. In certain polling locations, none have access. Further, these election officials, who cannot share their SVRS credentials with anyone else, do not and cannot devote the entirety of their time on election day to running SVRS searches. They often juggle many priorities and supervise several volunteers. The SVRS also tracks search activity and will log users out—and lock them out of their accounts—if they run too many searches too quickly.

The defendants attempt to downplay these issues by noting that election officials may and are encouraged to call the Secretary's Help Desk and the Attorney General's Hotline if they have difficulty registering voters. But even if election workers follow that direction—and as was demonstrated during the 2025 elections, many will not—those options will not make a meaningful difference. Only eight people, combined, between the Help Desk and the Hotline are

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trained to run an SVRS search. The Secretary acknowledged that his office would not be able to handle thousands of calls on election day. Considering the hundreds of thousands of New Hampshire voters who registered to vote on general and primary election days between 2016 and 2024, and that more than 10,000 voters signed citizenship QVAs on election day in the last federal election, voters seeking to register are certain to encounter lengthy delays. Many will be disenfranchised entirely.

Finally, the instructions governing the search procedures will lead to false negatives. The instructions to local officials state that responsive records will be returned only if the record perfectly matches the search query of the citizen's name and birth date. Thus, if a voter fills out anything other than his given name exactly (e.g. a nickname, a middle name used as a first name, etc.), or if a local election official makes an error when inputting the information, the search will return a false negative.

In short, the procedures authorized by HB 464 will not meaningfully reduce the burden HB 1569 placed on voters by eliminating the QVA to prove citizenship. The burden on voters remains significant. Thus, HB 1569's elimination of the QVA can survive only if the defendants have introduced "sufficiently weighty evidence" to show that the state's "interests make it necessary to burden" the plaintiffs' rights in this case. Fish, 957 F.3d at 1133-34.

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3. Asserted state interests

The defendants put forward three state interests as justifications for the burdens imposed by HB 1569's elimination of the QVA: 1) election integrity; 2) safeguarding voter confidence; and 3) protecting the public fisc. The court agrees with the defendants "that each of these interests is legitimate in the abstract." Fish, 957 F.3d at 1132. The court also acknowledges that

abstract interests have, at times, been sufficient to ward off constitutional challenges to election laws. See, e.g. Crawford, 553 U.S. at 194–97 (finding that preventing voter fraud and safeguarding voter confidence were legitimate state interests even though the record contained no evidence of voter fraud or resultant threats to voter confidence in the state). But courts that do not require evidence that claimed interests are at risk to justify legislation imposing on the right to vote do so because the burden on voters from the legislation is limited or is mitigated by some sort of safety valve. See, e.g., Brnovich v. Democratic Nat'l Comm., 594 U.S. 647, 678–86 (2021) (describing the relevant burdens as "modest," "small," and "unremarkable" when concluding that a state "may take action to prevent election fraud without waiting for it to occur and be detected within its own borders"); Crawford, 553 U.S. at 194–98 (accepting state's justifications for photo-ID law without requiring evidence of voter fraud because the plaintiffs had "not introduced evidence of a single, individual Indiana resident who will be unable to vote as a result of [the challenged law] or who will have his or her right to vote unduly burdened by its requirements" and the availability of provisional ballots mitigated any burden imposed except as to a very small group of people).

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Where, as here, there are sufficient facts to find that an election law imposes a significant burden on a large group of people, the sliding scale requires more than an abstract interest. The court must look at the "incremental interest[s] in the specific regulation at issue." Gorbea, 970 F.3d at 15. It must "determine the legitimacy and strength of each." Anderson, 460 U.S. at 789. The defendants "point[] to no concrete evidence that 'those interests make it necessary to burden the plaintiff[s'] rights' in this case." Fish, 957 F.3d at 1132 (quoting Burdick, 504 U.S. at 434); Anderson, 460 U.S. at 789. Therefore, the court concludes that the state's interests do not justify the burdens HB 1569 imposes on the right to vote by eliminating the QVA.

a. Election integrity

The defendants argue at the outset that election integrity is such a vital state interest that the defendants "need not prove that actual voter fraud existed in New Hampshire prior to HB 1569" or "that any contributor to election integrity existed before passing" HB 1569. Doc. no. 169 at 19-20.

Again, in a case such as this, in which the court has already found that the elimination of the QVA imposes a significant burden on the right to vote, the court "must look at more than whether the proffered interests are legitimate in the abstract." Fish, 957 F.3d at 1133 and 1135-36 (distinguishing Crawford because the burden on voters' rights was "limited" and "further mitigated by the possibility of casting provisional ballots"). The court must look at whether there is evidence that New Hampshire's interest in election integrity outweighs the significant burden on voters' rights. It does not.

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Dr. Minnite, the plaintiffs' expert on the subject of voter fraud, found 47 instances of wrongful voting (which includes unintentional voting by unqualified voters) in New Hampshire from 1998 to 2024, including in local elections. Only eight people identified as noncitizens may have cast a ballot during those 26 years, accounting for 26 ballots, at most. Only three of those voters may have registered using QVAs to prove their citizenship. Only one person over those 26 years is alleged to have committed voter fraud (intentional voting while knowing that he was not qualified to do so) and he has been criminally prosecuted. His prosecution remains ongoing. Such miniscule numbers strongly undercut any legitimate concern about election integrity vis-à-vis noncitizen voting and, consequently, the state's interest in addressing it. See Fish, 957 F.3d at 1134 (stating that the district court's finding that "at most, 67 noncitizens registered or attempted to register in Kansas over the last 19 years" and "[a]t most, 39 noncitizens have found their way

onto the Kansas voter rolls in the last 19 years" represented "incredibly slight evidence that Kansas's interest in counting only the votes of eligible voters is under threat"). Both the Secretary and Deputy O'Donnell testified that noncitizen voting is essentially non-existent in New Hampshire. Even in cases involving "a minimal burden," "*one* bizarre instance" suggesting that the challenged law could serve a state interest "cannot justify [a] burden" imposed on "*thousands*" of voters every election. Eakin v. Adams Cnty. Bd. of Elections, 149 F.4th 291, 317 (3d Cir. 2025), petition for cert. filed, No. 25-967 (U.S. Feb. 17, 2026). Here, HB 1569's elimination of the QVA to prove citizenship represents far more than a minimal burden.

New Hampshire's interest in election integrity cannot justify the burden on New Hampshire voters based on the evidence in this case.

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b. Safeguarding voter confidence

The defendants argue that eliminating the QVA increases public confidence in New Hampshire's elections. Once again, there is no doubt that "[c]onfidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy." Purcell v. Gonzalez, 549 U.S. 1, 4 (2006). Thus, New Hampshire has a legitimate interest in safeguarding voter confidence. But there is no evidence that HB 1569 has improved or will improve voter confidence by eliminating the QVA to prove citizenship.

The Secretary acknowledged that the surveys on which he relies to understand voter confidence show that "about 90% of people in New Hampshire have confidence in" the state's elections, and that this is a "high level of confidence." Doc. no. 165, Trial Tr. at 54:22-55:3. He also thinks that voters are more concerned about the way that elections are conducted outside of the state than within the state. The Special Committee on Voter Confidence reported that the

majority of New Hampshire voters have confidence in the state's elections. Although the Special Committee recommended certain changes to election laws to improve voter confidence, such as improved recruitment and training of local election officials and expanded voter education, it did not recommend that the state eliminate the QVA to prove citizenship. Nor did it recommend any other changes to New Hampshire's proof-of-citizenship laws.

Tellingly, the defendants do not even attempt to explain how eliminating the citizenship QVA furthers the state's interest in improving voter confidence. Nor have either of the defendants' offices taken any steps to measure HB 1569's effects on voter confidence. Instead, the defendants merely note the relationship between election integrity and voter confidence. But, as mentioned, eliminating the QVA does almost nothing to further the state's interest in election integrity and so, this relationship between election integrity and voter confidence does not bolster the defendants' argument. Moreover, as Dr. Mayer testified, legislation such as HB 1569 does nothing to affect voters' opinions about election integrity and will not enhance voter confidence.

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HB 1569's elimination of the QVA to prove citizenship does not further the state's interest in safeguarding voter confidence. And, as the Secretary and Dr. Mayer agree, it may have precisely the opposite effect. If large swaths of voters are prevented from voting because they lack DPOC, as the evidence shows will happen in upcoming elections, it "also may have the inadvertent effect of eroding, instead of maintaining, confidence in the electoral system." Fish v. Kobach, 309 F. Supp. 3d 1048, 1113 (D. Kan. 2018).

c. Protecting the public fisc

Finally, the defendants argue that the state's interest in protecting the public fisc and conserving state resources justifies HB 1569's provision eliminating the QVA to prove

citizenship. They point to testimony regarding the costs associated with the Secretary's office's follow-up efforts after each election to confirm the identity of voters who used a QVA. These efforts included checking that the number of affidavits entered into the SVRS matched the number of physical affidavits retained by election officials, and sending letters to voters who used a QVA to ensure that they actually voted.

HB 1569's elimination of citizenship QVAs does nothing to conserve the state resources expended on these efforts. New Hampshire law required the investigation of domicile and identity affidavits, but not citizenship affidavits. Investigator Tracy testified that the state has never systematically investigated QVAs for citizenship. Investigations into alleged noncitizen voting take up less than 2% of the Election Law Unit's time, and the majority of those investigations have not involved the use of a QVA to prove citizenship. Deputy O'Donnell testified that the Election Law Unit had sufficient staffing and funding to handle those investigations. Therefore, eliminating the QVA to prove citizenship will not meaningfully reduce the time necessary for the Attorney General's office to investigate noncitizen voting, which was already minimal.

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In contrast, HB 1569's elimination of the QVA has already resulted in substantial costs to New Hampshire. As the Secretary agreed, "HB 464 would not have been necessary if HB 1569 had not become law." Doc. no. 165, Trial Tr. at 59:2-4. The state paid a vendor more than $167,000 to update the SVRS to comply with the provisions of HB 464. The Secretary's office has spent a significant amount of staff time taking various steps necessary to implement the system, and will continue to do so in the future, including efforts to exchange data with the Department of Safety and support the mechanisms to transmit that data, to train local and state

officials how to run the necessary searches, to actually run the searches to confirm voter citizenship, and to educate the public about the need to bring DPOC to register.

4. Burden of the elimination of the QVA to prove citizenship versus state interests

The burden on New Hampshire voters from HB 1569's elimination of the QVA is not justified by the state interests put forward by the defendants. Although these interests are legitimate in the abstract, they are not meaningfully served by HB 1569's elimination of the QVA. Further, the evidence suggests that eliminating the QVA may have actually harmed the state's proffered interests. Because the burden on New Hampshire voters from HB 1569's elimination of the QVA is significant and greatly outweighs the state's interests in this case, HB 1569's elimination of the QVA to prove citizenship is an unjustifiable burden on the right to vote in violation of the First and Fourteenth Amendments.

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B. Elimination of the CVA Constitutes an Unjustifiable Burden on the Right to Vote

HB 1569's elimination of the CVA as an acceptable response to voter challenges will also burden New Hampshire voters, though not as clearly or significantly as the elimination of the citizenship QVA. Nevertheless, eliminating the CVA does not further the state's interests. Therefore, the burdens on voters from the elimination outweigh the state's interests offered as justification. HB 1569's elimination of the CVA for voter challenges thus constitutes an unjustifiable burden on the right to vote.

1. Burden on the right to vote from elimination of CVA

The record shows that HB 1569's elimination of the CVA will likely deny certain eligible voters the right to vote.

Although there is no record of anyone previously making a formal challenge to a voter's qualifications as permitted by New Hampshire law, the previous availability of the CVA to overcome any such challenge renders that fact of limited importance. New Hampshire's voting scheme allows myriad people to challenge voters' qualifications, potentially preventing voters from casting ballots. These permitted challengers are not limited to election workers or to registered voters from the same town or ward who might have personal knowledge supporting a challenge. Instead, the law also permits challengers appointed by political parties. The supervisors of the checklist must determine whether any challenge based on age, citizenship, domicile, or identity is well grounded. Moderators decide challenges lodged on other grounds. Before HB 1569, even if a supervisor or moderator found the challenge well grounded, a voter would be allowed to vote if he simply submitted a sworn CVA attesting to his eligibility. So, there was little incentive to lodge a challenge, especially if it was not ironclad. After HB 1569, a voter who is successfully challenged does not have the benefit of the procedural safeguard of the CVA and can vote only if he secures an order from a state court. Thus, HB 1569 has increased the practical effect of a challenge and, potentially, the incentive to initiate one. Particularly in today's political environment and under the statutory scheme as it now exists, eligibility challenges are likely to become more common. Indeed, Ms. Zink testified that Open Democracy has already seen efforts from political party committees to recruit election-day challengers since HB 1569 went into effect.

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The threat of challenges, including baseless challenges, is supported by the evidence that groups attempted to lodge "mass challenges" against voters in the November 2024 election. Doc. no. 161, Trial Tr. at 20:5-8. In that instance, the Attorney General's office was able to issue pre-election guidance directing election officials to rule the challenges not well grounded. But the statute contemplates moderators and supervisors deciding these issues. The likelihood that a challenge will erroneously deny an eligible voter the right to vote is heightened by the fact that the law provides no guidance for election officials with respect to determining whether it is more likely than not that a challenge is well grounded. Cf. Saucedo v. Gardner, 335 F. Supp. 3d 202, 218 (D.N.H. 2018) (noting that the "absence of functional standards" and the fact that "the ultimate determination is left to the sole discretion of the" election official "entails tangible risks"). And challenged voters, who are already registered, will have no advanced notice that they will be challenged and are unlikely to have documents which might help them rebut a challenge, such as a birth certificate or passport.

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The processes that HB 464 affords will not mitigate the burden that eliminating the CVA imposes on voters. First, the gaps and practical limitations concerning SVRS searches discussed above limit HB 464's utility in assisting challenged voters. More importantly, however, there is no evidence that election officials are permitted to search the SVRS to assist voters in rebutting a challenge. The Secretary's January 5, 2026 guidance regarding SVRS searches states that such searches "can now be used to verify certain citizenship, age, name change, and death information for voter registration." Ex. UU at 1 (emphasis added). And the Application requesting a search of the SVRS states that it is "for the Purpose of New Hampshire Voter Registration" and further warns the applicant to look to verify records "for voter registration purposes ONLY." Ex. 176 at 1. Particularly in light of the Secretary's guidance warning election officials of the consequences

of performing unauthorized SVRS searches, including criminal penalties, it is unlikely that HB 464's processes will benefit a challenged voter in any way.

After HB 1569's elimination of the CVA, the only option for a successfully challenged voter is to appeal the election official's decision to the superior court. That is not a viable safeguard against deprivation. First, even if the process to obtain judicial relief were quick, simple, and free, many challenged voters simply would not have time or the ability to pursue that course of action. Election days are not holidays, and voters often have work or other obligations. Many voters choose to vote toward the end of the day, leaving them little time to be able to pursue relief in superior court if they are successfully challenged, even if they had the means to do so.

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But the process to obtain judicial relief in superior court to overcome a voter challenge is not quick, simple, or free. Although the defendants' offices have taken steps to facilitate faster disposition of election-related matters on election day, a voter must either find and pay an attorney to institute a case within a matter of hours (at most) or must be able to navigate the procedural hurdles inherent in any legal action on a pro se basis. Further, a voter pursuing relief in superior court pro se will still incur costs, as the current filing fee for a civil action in superior court is $325. Given the many impediments to obtaining relief from the superior court on election day, that process will provide little benefit to challenged voters.

Thus, HB 1569's elimination of the CVA imposes a considerable burden on eligible New Hampshire voters by removing the procedural safeguard that allows them to overcome a challenge to their qualifications, especially because New Hampshire does not permit provisional ballots. That burden is lower than the one placed on New Hampshire voters from HB 1569's elimination of the QVA to prove citizenship. Nevertheless, it is "at least somewhere in between

the two poles" of "'severe' and 'nonsevere,'" Fish, 957 F.3d at 1128 n.6, and "must be justified by relevant and legitimate state interests 'sufficiently weighty to justify the limitation.'" Crawford, 553 U.S. at 191 (quoting Norman, 502 U.S. at 288-89).

2. State's interests

At the outset, it is worth noting that Secretary Scanlan testified that he could not think of a single state interest advanced by the elimination of the CVA in the context of a voter challenge. Doc. no. 165, Trial Tr. at 44:24-45:2. In their post-trial briefing, however, the defendants rely on the same three state interests that they offered to justify the elimination of the QVA: 1) election integrity; 2) safeguarding voter confidence; and 3) protecting the public fisc. As the court concluded above, these interests were only minimally furthered, at best, by HB 1569's elimination of the citizenship QVA. They are not advanced at all by the removal of the CVA for voter challenges.

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As discussed, there is no evidence of any fraud or any other misuse involving a CVA in the context of a voter challenge. And although the defendants attempt to cast doubt on the legitimacy of using a CVA to overcome a successful challenge, that effort is bewildering. After all, the challenge process begins when a challenger completes a sworn affidavit. The defendants offer no explanation as to why the state should trust a sworn affidavit used to initiate a challenge more than a sworn CVA used to overcome a challenge. As Investigator Tracy, testified, such a system "doesn't make sense." Doc. no. 162, Trial Tr. at 87:18-20.

With regard to safeguarding voter confidence, the defendants state simply that ensuring election integrity bolsters public confidence in elections. Of course, Secretary Scanlan himself disagreed, testifying that the CVA's existence to overcome voter challenges is not a contributing

factor to declining voter confidence in New Hampshire. Doc. no. 165, Trial Tr. at 45:15-18. Regardless, as mentioned above in the context of the QVA, New Hampshire voters' confidence in the state's elections is notably high, and elimination of the CVA does nothing to further the state's interest in election integrity, which could arguably increase voter confidence.

Finally, the defendants point to voters' use of the CVA to prove identity outside of the challenged-voter process and assert that use of CVAs for that purpose was the source of a substantial burden on state resources. These resources, as Director Piecuch testified, included follow-up efforts after an election to verify that voters who used CVAs actually voted and any actions taken by the Attorney General's office to track down unverified affiants. But even if the defendants had shown that the elimination of the CVA meaningfully saved the state money and other resources—which they have not done—that is not the issue in this case. Open Democracy challenges the provisions of HB 1569 that eliminated the CVA for use in voter challenges. The state has expended no resources investigating CVAs used to overcome voter challenges, and the defendants do not contend that they would have done so in the future absent HB 1569's provisions.

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3. Burden of elimination of CVA versus state interests

The burden on New Hampshire voters from HB 1569's elimination of the CVA for voter challenges is considerable. The state interests that the defendants put forth to justify that burden are not in any way served by HB 1569. Unmistakably, therefore, they are not "relevant and legitimate state interests 'sufficiently weighty to justify the limitation.'" Crawford, 553 U.S. at

191 (quoting Norman, 502 U.S. at 288-89). HB 1569's elimination of the CVA is an unjustifiable burden on the right to vote in violation of the First and Fourteenth Amendments.

III. Elimination Of The CVA Violates Voters' Procedural Due Process Rights (Count III)

"To establish a procedural due process violation, [a] plaintiff must identify a protected liberty or property interest and allege that the defendants, acting under color of state law, deprived [him] of that interest without constitutionally adequate process." González-Droz v. González-Colón, 660 F.3d 1, 13 (1st Cir. 2011) (quotations omitted). "The basic guarantee of procedural due process is that, before a significant deprivation of liberty or property takes place at the state's hands, the affected individual must be forewarned and afforded an opportunity to be heard at a meaningful time and in a meaningful manner." Id. (quotations omitted). This means affording the individual facing deprivation "a reasonable time" to appear and contest that denial. A.A.R.P. v. Trump, 605 U.S. 91, 94–95 (2025).

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Open Democracy's procedural due process claim is governed by the three-part framework from Mathews v. Eldridge, 424 U.S. 319 (1976).[21] To determine the sufficiency of the process afforded, the court must balance three factors:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional or substitute procedural safeguards; and

[21] The defendants suggest in passing that the court should not apply the Mathews test because the availability to seek appellate review of a successful challenge in superior court is "orthodox due process, and it cannot be reasonably disputed." Doc. no. 169 at 30. For the reasons explained, the option to seek relief in superior court is far from a sufficient procedural safeguard to satisfy the Fourteenth Amendment.

Further, the defendants stated in their pretrial statement that they intended to argue that "Open Democracy's procedural due process claim is intertwined with Counts I and II and similarly fails the scrutiny of that framework." Doc. no. 124, ¶ 4 (citing Ariz. Democratic Party, 18 F.4th at 1195). The defendants did not make that argument in their post-trial briefing.

> finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id. at 335; Collins v. Univ. of New Hampshire, 664 F.3d 8, 17 (1st Cir. 2011). As the parties agree, much of the discussion regarding the three Mathews factors overlaps with the court's analysis of Open Democracy's claim in Count II.

A. Protected Interest

The defendants concede that "[v]oters have an interest in their rights to cast ballots," doc. no. 169 at 31, and so they address only the second and third Mathews factors. To be clear, "[i]t is beyond dispute that '[t]he right to vote is of the most fundamental significance under our constitutional structure.'" Saucedo, 335 F. Supp. 3d at 217 (quoting Ayers-Schaffner, 37 F.3d at 727). Thus, this interest merits "significant weight." Id.

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B. Risk of Erroneous Deprivation

The elimination of the CVA creates a risk that eligible voters will be denied the right to vote because of the challenged-voter process. The court noted above many factors that heighten the risk of disenfranchisement, including that New Hampshire allows individuals who are appointed by political party committees to initiate challenges, Ms. Zink's testimony that Open Democracy has seen efforts from political party committees to recruit election-day challengers after HB 1569 went into effect, prior efforts to lodge mass challenges against groups of people, the absence of official guidance for supervisors and moderators about resolving a challenge, the likelihood that challenged voters will not have documents on them that could otherwise prove their eligibility, the ineffectiveness or unavailability of HB 464's procedures to protect

challenged voters' rights, and the inadequate processes available for review of a successful challenge.

The defendants argue that voters do not face a risk of erroneous deprivation of their rights from the elimination of the CVA for two reasons. First, they argue that challenged voters receive constitutionally "adequate notice" because a moderator must give the challenged voter an opportunity to be heard before ruling on a challenge. That requirement does not significantly lessen the erroneous risk of deprivation of the right to vote. As mentioned, a challenged voter has no prior notice that he will be challenged and so has no opportunity to gather documents or otherwise devote time to preparing a response that might help him rebut the challenge. Thus, the fact that a moderator must inform a voter of a challenge and ask him for an immediate response hardly meets the "fundamental requirement of due process [of] the opportunity to be heard at a meaningful time and in a meaningful manner." Mathews, 424 U.S. at 333 (quotations omitted).

Second, the defendants argue that the availability of an appeal to the superior court satisfies due process. But, for the reasons discussed above, the appeal available is not the type of "meaningful judicial review" that satisfies the Fourteenth Amendment's guarantee of due process. Chongris v. Bd. of Appeals of Town of Andover, 811 F.2d 36, 40 (1st Cir. 1987). It is clear that the Attorney General's office, and in particular Deputy O'Donnell when he was chief of the Election Law Unit, endeavored to make the process to obtain judicial review of a successful challenge easier for the challenged voter. But those efforts could not render those procedures consistent with due process without the safety valve of the CVA. Again, it is simply not feasible for most challenged voters who go to the polls on election day without notice that they will be challenged to a) learn of and understand the process to appeal the moderator's or supervisor's decision, b) file a case pro se or find an attorney to initiate an action, c) pursue a

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court order, and, if successful, d) return to the polls to cast a ballot. That option is particularly illusory given that hiring an attorney or paying a filing fee is expensive, and that voters will have at most a matter of hours to pursue this relief, and some only a matter of minutes.

Thus, there is a considerable risk of erroneous deprivation of voters' rights to vote because HB 1569 eliminated the CVA for voter challenges. See, e.g., Panzella v. Sposato, 863 F.3d 210, 218 (2d Cir. 2017), as amended (July 18, 2017) (finding a significant risk of erroneous deprivation of rights even though the plaintiff could initiate proceedings in New York Supreme Court because that option required a person to "give up not only time, but also money to initiate a lawsuit and [usually] retain an attorney" (quotations omitted)). There is far more than mere "probable value" that the CVA "would provide a tangible benefit" as a procedural safeguard against that erroneous deprivation, as it provides a guarantee that a wrongfully challenged voter will not be denied the right to vote. Saucedo, 335 F. Supp. 3d at 219.

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C. Government Interest

The defendants assert that elimination of the CVA for challenge purposes advances New Hampshire's "interest in preventing the risk and suspicion of fraud, election misadministration, voter confusion, voter registration inaccuracies, and other threats to the electoral process." Doc. no. 169 at 33. The court has already explained above in its discussion of Count II that the elimination of the CVA for voter challenges does not further those of these interests raised in defense of that claim. The defendants make no coherent effort to explain how the additional interests they raise here, such as voter confusion or voter registration inaccuracies, could possibly implicate the elimination of the CVA for voter challenges. And the defendants do not

contend that the reinstatement of the CVA to overcome a voter challenge puts any burden on the state.

D. Balancing the Mathews Factors

HB 1569's elimination of the CVA to overcome a voter challenge implicates one of the most important and fundamental rights in our country—the right to vote. The CVA functioned for years as a procedural safeguard against the erroneous deprivation of that right as a result of the voter-challenge process. HB 1569's removal of the CVA, and the corresponding absence of adequate procedural protections for a wrongfully-challenged voter, fails to guarantee voters basic fairness. Particularly because the CVA's elimination does not further the state's proffered interests and there is a simple procedural fix that would eliminate the risk of disenfranchisement—the reinstatement of the CVA—HB 1569's provisions removing the CVA for challenge purposes deprives voters of due process.

Therefore, Open Democracy is entitled to judgment on its procedural due process claim in Count III.

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IV. Motion For Sanctions

During the trial, the Open Democracy Plaintiffs sought to exclude several portions of witnesses' testimony regarding the implementation of HB 464, the SVRS generally, and Department of State policy. The Open Democracy Plaintiffs argued that such testimony relied on information that the defendants refused to produce during discovery and which contradicted Secretary Scanlan's Rule 30(b)(6) witness deposition testimony, which was taken just three business days before trial began.

The court and parties agreed that the court would permit the defendants to offer the witnesses' testimony and that the Open Democracy Plaintiffs could file a post-trial motion for sanctions. They did so. In it, they request that the court issue the following forms of relief:

> First, where a defense witness's testimony conflicts with that of Secretary Scanlan (or seeks to cure his averred lack of knowledge) on issues regarding the implementation of HB 464, the Open Democracy Plaintiffs seek a reasonable inference that the other witness is less credible on those subject matters, especially matters of Department of State policy—as would be reasonably expected given the Secretary's leadership role and his 30(b)(6) designation. Second, the Open Democracy Plaintiffs request that, in light of Defendants' failure to supplement and Plaintiffs' resultant inability to more fully probe the evident inadequacies of the HB 464 system, the Court give appropriate, lesser weight to testimony which was based on undisclosed responsive information.

Doc. no. 167 at 3. The defendants object, arguing that they committed no discovery violations. Doc. no. 174.

This is hardly the first discovery dispute regarding the defendants' production of information related to the SVRS and HB 464's implementation. The court granted the Open Democracy Plaintiffs' motion to compel the production of a copy of the SVRS over the defendants' objection. See Coal. for Open Democracy v. Scanlan, No. 24-CV-312-SE, 2025 WL 1503937 (D.N.H. May 27, 2025). Subsequently, after the defendants refused to produce any discovery related to HB 464 on the ground that it was irrelevant and then relied heavily on HB 464's provisions in their summary judgment motion, the plaintiffs moved to compel the defendants to produce discovery related to HB 464's implementation. The court granted the motion in part, ordering that "the defendants shall search for, collect, and produce documents generated after June 1, 2025, concerning HB 464 and its implementation and which are responsive to the plaintiffs' discovery requests." Dec. 2, 2025 End. Or.

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The court later granted the plaintiffs' request to take a new deposition under Rule 30(b)(6) on the limited topic of HB 464 and the documents produced in response to the order on the motion to compel. New Hampshire Youth Movement v. Scanlan, No. 24-CV-291-SE, 2026 WL 122779, at *7 (D.N.H. Jan. 15, 2026). The defendants designated Secretary Scanlan as the Rule 30(b)(6) witness, and the deposition took place on February 4, 2026.

At trial, Dr. Mayer testified as an expert for the plaintiffs regarding several issues, including his understanding of the deficiencies of the processes authorized by HB 464 and HB 464's effect on voters' ability to register. After Dr. Mayer's testimony concluded and he left the state of New Hampshire, the defendants elicited testimony from witnesses regarding HB 464's implementation and users' SVRS search capabilities that contradicted Secretary Scanlan's Rule 30(b)(6) testimony and undermined the facts upon which Dr. Mayer relied. Such contradictory testimony includes Deputy O'Donnell's and Director Piecuch's statements that state-level users can perform partial name searches of the SVRS and perform remote SVRS searches by phone on behalf of local election officials even though the voter would not be present in front of the state-level user. In addition, the defendants elicited testimony that they never disclosed to the plaintiffs during discovery, including testimony regarding the purported nature of the DMV data integrated into the SVRS and testimony about the effect on search results of incorrect information entered into optional search fields during a search.

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The Open Democracy Plaintiffs argue that the defendants violated Federal Rule of Civil Procedure 26(e) because they failed to supplement their discovery responses with information concerning HB 464's implementation. Specifically, they contend that the defendants' "responses to Plaintiffs' interrogatories and requests for the production of documents, as well as the testimony of Defendants' Rule 30(b)(6) designee, omitted key information about the

implementation HB 464 and its resulting changes to the SVRS, information Defendants ambushed Plaintiffs with at trial." Doc. no. 167 at 10. They request the relief noted above, specifically that the court give testimony on undisclosed matters "lesser weight" and that it deem testimony that conflicts with Secretary Scanlan's Rule 30(b)(6) testimony "less credible."

Under Federal Rule of Civil Procedure 26(e), a party who has responded to an interrogatory or request for production "must supplement or correct its disclosure or response . . . in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing." Fed. R. Civ. P. 26(e). Under Rule 37(c), "[i]f a party fails to provide information" required by Rule 26(e), and the failure was not "substantially justified" or "harmless," the court may order sanctions. Fed. R. Civ. P. 37(c).

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The Open Democracy Plaintiffs' complaints about the defendants' behavior fall into two categories: 1) testimony regarding information that the defendants never disclosed to the plaintiffs and 2) testimony that conflicts with Secretary Scanlan's Rule 30(b)(6) testimony. The former category implicates Rule 26(e). There is no doubt that the defendants violated their duty to supplement their discovery responses under that rule. An "important object" of the Federal Rules governing discovery and supplementation "is to avoid trial by ambush." Macaulay v. Anas, 321 F.3d 45, 50 (1st Cir. 2003); Colon-Millin v. Sears Roebuck De Puerto Rico, Inc., 455 F.3d 30, 37-38 (1st Cir. 2006). Here, the defendants offered testimony at trial regarding HB 464's implementation that they never disclosed to the plaintiffs despite repeated requests and an order from this court. Moreover, they offered this testimony after the plaintiffs' expert witness

had concluded his testimony regarding the effects of HB 464's procedures based on the discovery the defendants had provided to that point.[22]

The defendants' failure to supplement their discovery responses was not substantially justified or harmless. Indeed, the plaintiffs and the court had specifically raised concerns about this type of "trial by surprise" during the parties' several discovery disputes. The defendants' dereliction of their discovery obligations deprived the plaintiffs of the opportunity to test the veracity of witnesses' testimony regarding the functionality of HB 464's procedures or prepare their own expert witness to offer an opinion based on accurate information. As such, the defendants' violation subjects them to sanctions under Rule 37.

As for Secretary Scanlan's testimony, "an organization that is served with a Federal Rule of Civil Procedure 30(b)(6) deposition notice is obligated to produce a witness knowledgeable about the subjects described in the notice and prepare the witness to testify not simply to his or her own knowledge, but the corporation's knowledge." Dow Corning Corp. v. Weather Shield Mfg., Inc., No. 09-10429, 2011 WL 4506167, at *4 (E.D. Mich. Sept. 29, 2011). Rule 30(b)(6) "aims to prevent a corporate defendant from thwarting inquiries during discovery, then staging an ambush during a later phase of the case." Rainey v. Am. Forest & Paper Ass'n, Inc., 26 F. Supp. 2d 82, 95 (D.D.C. 1998). "[T]he testimony of the representative designated to speak for the corporation are admissible against it. But as with any other party statement, they are not 'binding' in the sense that the corporate party is forbidden to call the same or another witness to

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[22] The timing of the trial was a point of contention throughout the litigation due to the specter of the Purcell principle and the defendants' repeated requests to delay trial. Thus, the parties were restricted to a limited timeline. The plaintiffs reasonably declined as unfeasible the court's offer to recall Dr. Mayer after he had finished testifying and left the state so that he could respond to the previously undisclosed information regarding HB 464.

offer different testimony at trial." United States ex rel. Landis v. Tailwind Sports Corp., 292 F. Supp. 3d 211, 217 (D.D.C. 2017) (quoting 8A Charles Alan Wight & Arthur R. Miller, Federal Practice and Procedure § 2103 (3d ed. 2017) (quotations omitted)); see W.R. Grace & Co. v. Viskase Corp., No. 90 C 5383, 1991 WL 211647, at *2 (N.D. Ill. Oct. 15, 1991) (allowing corporate party to offer at trial evidence contrary to its corporate representative's Rule 30(b)(6) deposition testimony). Nevertheless, "[t]here may be some circumstances . . . in which it may be appropriate to sanction an organization for failing to comply with its Rule 30(b)(6) obligations and such sanctions can include precluding trial testimony on certain matters, or testimony that is inconsistent with deposition testimony." Mass Engineered Design, Inc. v. Planar Sys., Inc., No. 3:16-CV-1510-SI, 2017 WL 11820360, at *9 n.1 (D. Or. Aug. 31, 2017). Such sanctions are appropriate only to enforce the purpose of the rule, which is to prevent a defendant "from thwarting inquiries during discovery, then staging an ambush during a later phase of the case." Rainey, 26 F. Supp. 2d at 95.

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Here, the circumstances surrounding Secretary Scanlan's Rule 30(b)(6) testimony regarding HB 464 warrant sanctions. The defendants fought against producing any information relating to HB 464's implementation. The court ordered them to produce a Rule 30(b)(6) witness for deposition on that topic. They offered Secretary Scanlan as that witness mere days before trial. Witnesses offered by the defense after the plaintiffs' witnesses had already testified directly contradicted Secretary Scanlan's testimony that users are not able to run partial searches in the SVRS or perform searches remotely for election officials. This is precisely the type of "ambush" at trial that Rule 30(b)(6) is designed to avoid. As such, sanctions are warranted.

Nevertheless, although sanctions are warranted and those sanctions that the Open Democracy Plaintiffs request—giving certain testimony "lesser weight" or finding it "less

credible"—are reasonable, the court declines to impose sanctions. The court does so only because it ultimately finds in the plaintiffs' favor on every claim in this case even accepting the disputed testimony into evidence and resolving the credibility of that testimony in the normal course. Had the disputed testimony affected the court's ultimate determination in this case, the court would have imposed sanctions upon the defendants.

V. Remedy

The plaintiffs ask the court to render judgment declaring that the portions of HB 1569 that 1) repealed the use of QVAs to prove citizenship when registering to vote in New Hampshire and 2) repealed the use of CVAs to overcome voter challenges are unconstitutional. They further request a statewide injunction barring the defendants from enforcing those portions of HB 1569.[23]

Courts "have broad authority to fashion equitable relief" once they find a constitutional violation. Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. for City of Bos., 89 F.4th 46, 56 (1st Cir. 2023). When crafting a remedy, the court "must undertake an equitable weighing process to select a fitting remedy for the legal violations it has identified, taking account of what is necessary, what is fair, and what is workable." North Carolina v. Covington, 581 U.S. 486, 488 (2017) (cleaned up).

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[23] The relevant portions of HB 1569 that eliminated the QVA for proving citizenship when registering are the repeal of RSA 654:12 and 654:7 (effective Nov. 11, 2024). The relevant portions of HB 1569 that eliminated the CVA for responding to a voter challenge are the repeal of RSA 659:27, RSA 659:27-a, RSA 659:30, RSA 659:31, and RSA 659:32 (effective Nov. 11, 2024). See Ex. AAA1 at 33–48 (identifying changes enacted by HB 1569).

The defendants argue standing, mootness, and the merits of the plaintiffs' substantive claims, but do not argue that the equitable relief the plaintiffs request is beyond the court's authority or more expansive than is necessary to provide complete relief to the plaintiffs. See Trump v. CASA, Inc., 606 U.S. 831 (2025). Citing Purcell v. Gonzalez, the defendants do "request that the Court consider the scope of its final order, the demands the adverse order will likely place on Defendants and third parties out of Defendants' direct control (including vendors and non-party local election officials), and [] the proximity of the next election, when setting deadlines for compliance." Doc. no. 169 at 38 (citing Purcell, 549 U.S. at 4-5). Under Purcell, "federal courts should ordinarily not alter the election rules on the eve of an election." Republican Nat'l Comm. v. Democratic Nat'l Comm., 589 U.S. 423, 424 (2020). "Only under certain circumstances, such as where an impending election is imminent and a State's election machinery is already in progress is Purcell implicated." Am. Encore v. Fontes, 152 F.4th 1097, 1121 (9th Cir. 2025) (quotations omitted).

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Purcell does not constrain relief in this case. First, the court set the schedule in this case based on the parties' joint discovery plan and the defendants' representations that an order issued 90–120 days before the election would suffice "to implement the changes necessary so that no one would be disenfranchised and the public would not be confused and so on." See, e.g., doc. no. 52 at 18:21–20:13. A defendant may not rely on Purcell after making a specific representation on which the court relied in developing the schedule for the case. See Rose v. Raffensperger, 143 S. Ct. 58, 59 (2022) (rejecting application of Purcell when the respondent made "previous representations to the district court that the schedule on which the district court proceeded was sufficient to enable effectual relief as to the November elections should applicants win at trial"); Jacksonville Branch of NAACP v. City of Jacksonville, No. 22-13544,

2022 WL 16754389, at *2 (11th Cir. Nov. 7, 2022) (holding that the Purcell principle was not applicable where the defendants had agreed that they "would be able to conduct the March 2023 elections" if maps were in place by a certain date and "the entire schedule on which the district court proceeded was developed" on that basis). Even absent those representations, Secretary Scanlan testified that an order issued as late as early July would still leave sufficient time to implement the requested relief before the 2026 election.[24]

Moreover, "Purcell's heightened standard is not appropriate [where] . . . the primary reason for applying that standard—risk of voter confusion—[is] lacking." Jacksonville Branch of NAACP, 2022 WL 16754389, at *3; Purcell, 549 U.S. at 4-5 (counseling against issuing orders that "themselves result in voter confusion and [a] consequent incentive to remain away from the polls"). Here, there is no risk of confusion from an order reinstating QVAs to prove citizenship and CVAs to respond to voter challenges. Voters who are not sure whether they may use a QVA to register can still register using DPOC. New Hampshire voters have relied extensively on QVAs to prove citizenship in the past, and election officials already know how to administer them. Further, the court cannot identify any possible risk of voter confusion with respect to legitimate activities resulting from the reinstatement of the CVA for voter-challenge purposes.

For these reasons, the plaintiffs are entitled to declaratory and statewide injunctive relief as follows:

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[24] Director Piecuch initially estimated that it would take "four to six months" to "reimplement qualified voter affidavits for citizenship." Doc. no. 164, Trial Tr. at 54:14-17. But that estimate was based on her understanding that the defendants would need to make changes within the SVRS to reinstitute the QVA. She subsequently acknowledged that the defendants could effectuate relief without making changes to the SVRS. Doc. no. 163, Trial Tr. at 95:23-96:19. The defendants do not reference Director Piecuch's testimony or acknowledge Secretary Scanlan's testimony in their discussion of the Purcell principle.

1) HB 1569's repeal of the provisions of RSA 654:12 and RSA 654:7 permitting registrants to use the Qualified Voter Affidavit to establish citizenship violates the First and Fourteenth Amendments to the U.S. Constitution;

2) HB 1569's repeal of the provisions of RSA 659:27, RSA 659:27-a, RSA 659:30, RSA 659:31, and RSA 659:32 permitting voters to use the Challenged Voter Affidavit to respond to a successful challenge violates the First and Fourteenth Amendments to the U.S. Constitution;

3) HB 1569's repeal of the provisions of RSA 659:27, RSA 659:27-a, RSA 659:30, RSA 659:31, and RSA 659:32 permitting voters to use the Challenged Voter Affidavit to respond to a successful challenge constitutes a denial of procedural due process in violation of the Fourteenth Amendment to the U.S. Constitution;

4) The defendants and their respective agents, officers, employees, and successors, and all persons acting in concert with them, are permanently enjoined from giving effect to or enforcing HB 1569 to the extent that it repealed the provisions of RSA 654:12 and RSA 654:7 permitting registrants to use the Qualified Voter Affidavit to establish citizenship;

5) The defendants and their respective agents, officers, employees, and successors, and all persons acting in concert with them, are permanently enjoined from giving effect to or enforcing HB 1569 to the extent that it repealed the provisions of RSA 659:27, RSA 659:27-a, RSA 659:30, RSA 659:31, and RSA 659:32 permitting voters to use the Challenged Voter Affidavit to respond to a successful challenge.

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Conclusion

The plaintiffs' requests for declaratory and injunctive relief are granted as provided in this order. The Open Democracy Plaintiffs' motion for sanctions (doc. no. 167) is granted in part and denied in part as explained herein.

The plaintiffs' amended complaints request an award of attorneys' fees. Within 30 days of the date of this order, the plaintiffs shall file motions supporting an award of attorneys' fees. The defendants shall have 30 days from the date of filing to submit a response.

SO ORDERED.

Samantha D. Elliott
United States District Judge

May 28, 2026

cc: Counsel of Record.

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